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Country report
Gender equality

How are EU rules transposed into national law?

Italy

Simonetta Renga

Reporting period 1 January 2022 – 1 January 2023

2023 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. Later on, Law 53/2000 provided for bi-directional (that is to say: in favour of both women and men) positive action geared towards the reconciliation of professional, private and family life.

This legislation finds its roots in Article 3 of the Constitution. Article 3, Paragraph 1 provides a formal rule of equality as a constitutional right, stating: 'All citizens are equal and have equal dignity under the law, without distinctions on grounds of sex, race, language, religion, political opinions and personal or social conditions.'

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

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

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

- 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, o.s. No. 26;
- Law 178 of 30 December 2020, Budget Act for 2021, OJ No. 322 of 30 December 2020, o.s. No. 46/L;
- Law 160 of 27 December 2019, Budget Act for 2020, OJ No. 304 of 30 December 2019, o.s. No. 45/L;
- Law 145 of 30 December 2018, Budget Act for 2019, OJ No. 302 of 31 December 2018, o.s. No. 62;
- Law 205 of 27 December 2017, Budget Act for 2018, OJ No. 302 of 29 December 2017, o.s. 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 sustaining motherhood and fatherhood, time for care and for vocational training, and coordinating hours of the public services of towns, OJ No. 60 of 13 March 2000; 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.

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

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

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

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

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

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

assessed, to becoming an absolute concept, which can be defined in terms of social disadvantage or of infringement of fundamental social rights, different from equality.[3]

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

According to legal theories, the concept of indirect discrimination is based upon the three structural characteristics provided by both the EU legislation and the CJEU case law, which have greatly influenced the development of these concepts in Italy. The three characteristics are: apparent neutrality of the criterion under examination; particular disadvantage of one sex as compared with persons of the other sex, which according to some scholars does not mean existence of an effective prejudice;[5] absence of objective justification. Indirect discrimination is seen among academics as allowing the overtaking of the individual dimension of equality, thus giving value to the link between the individual and the group to whom she/he belongs: indeed, the comparison test to detect discrimination is made between groups. However, some academics affirm that, in 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 are no longer published.

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

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

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

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

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.[7]

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.[8]

[7] 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.

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

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.

Another important piece of legislation in this field is Law 53/2000 on sustaining motherhood and fatherhood, time for care and for vocational training, and coordination of hours in the town's public services (and its subsequent amendments). Also important is Decree No. 151/2001 on the protection of motherhood and fatherhood, which includes all rules on pregnancy, maternity, paternity, parental leave and leave related to work-life balance, also implementing Directives 2006/54, 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 new 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 43/2000, provides for a prohibition on discrimination on the ground of racial or ethnic origin. Article 2 of Decree No. 216 of 9 July 2003, implementing EU Directive 78/2000, provides for a prohibition on discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation.

3 Implementation of central concepts[9]

3.1 Sex/gender/transgender

3.1.1 Definition of 'gender' and 'sex'

The terms gender/sex are not defined in our 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 and in the concept of 'sexual orientation.'

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 78/2000/EC expressly included sexual orientation among the grounds of discrimination, although it did not include a specific protection for transgender, intersex and non-binary persons. Indeed, there are many provisions that prohibit direct and indirect discrimination related to sexual orientation (Article 15 of Workers Statute – 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 sexual orientation and gender discrimination.

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

Finally, it is worth mentioning that 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.

[9] See Burri, S. (2018), *EU gender equality law – update 2018*, European network of legal experts in gender equality and non-discrimination, available at https://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. Recently, 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.[10]

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.

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

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 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 Prohibition of pregnancy and maternity discrimination

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

3.2.4 Specific difficulties

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

3.3 Indirect sex discrimination[11]

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 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, professional 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.

[11] 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: https://www.equalitylaw.eu/downloads/5362-indirect-discrimination-in-employment-pdf-1-434-kb.

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[12]

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

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

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

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

[12] 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.

On 16 October 2019, Parliament approved four motions to tackle multiple discrimination on the grounds of gender and disability.[13] The motions are based on data showing the seriousness and prevalence of the phenomena and draw on the UN Convention on the Rights of People with Disabilities, ratified by the European Union on 5th January 2011 and on the European Parliament resolution of 29 November 2018 on the situation of women with disabilities. The motions encourage the Government to tackle multiple discrimination on the grounds of gender and disability by: enhancing mainstreaming of such discrimination in all public policies; assuring disabled women full access to healthcare, including sexual healthcare, and protecting their right to self-determination in this sphere; promoting professional training of healthcare staff to give assistance to disabled women; ensuring that disabled women are given all the information and support necessary to report that they are victim of violence or discrimination or to claim their rights in such cases; ensuring that their particular disadvantageous condition is fully taken into consideration by specific measures provided in the national plan against gender violence; promoting the participation of disabled women in the labour market, society and sports; including multiple discrimination issues in all campaigns aimed at tackling gender discrimination or disability discrimination; enhancing all initiatives to use EU funds aimed at tackling discrimination of disabled women; and promoting a monitoring system to evaluate both the prevalence of this kind of multiple discrimination and the effectiveness of the measures to tackle it. Although a motion is a soft measure, the approval of these documents is still very important as it focuses attention on an issue which is often overlooked in Italy.

3.4.2 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 hypothesis of multiple discrimination. Therefore, there are cases where the criterion of reaching retirement age is regarded as discriminatory exclusively on grounds of age, the ground of gender being ignored (for example Tribunal of Milan, 27 April 2005) and cases where the existence of gender discrimination is denied and the age ground is not taken into consideration at all (Court of Cassation, No. 9866/2007; Court of Cassation, No. 20455/2006; Tribunal of Genova 30 September 1997).

Another group of cases concerns non-EU disabled residents, who do not qualify for social protection benefits and advantages: the grounds of discrimination are those of nationality and disability. Here, indeed, the intervention of the Constitutional Court was crucial in

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

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

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

3.5 Positive action[14]

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 workers is discriminated against. They can start with a conciliation attempt (Article 37 Paragraph 1), where the agreement on the enforcement of a plan to remove the discrimination becomes a writ of execution through a decree of the court. They can also start with ordinary proceedings (Article 37 Paragraph 3), where the court in the decision ascertaining a collective discrimination, after having heard trade union representatives as well as the national or regional equality adviser, orders the employer to set up a plan to end it, fixing a time limit for drawing up the plan; a penal and an administrative sanction is provided in case of non-compliance with the court order and public contractors can be excluded from incentives and contracts with public administrations. In these cases the 'victim' is a group of women and the conciliation attempt or the complaint is initiated by the national or regional equality adviser.

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

[14] 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.

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

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

Article 9 of 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 with disabled children. Funds are accessible to private employers and some public bodies, such as local health units and hospitals. Moreover, the Family Fund can also support the promotion of and professional advice on, the planning and the monitoring of the measures to be carried out through territorial networks. The support of such measures by the Family Fund could be useful as far as the quality of the projects is concerned, but could also conceal the risk of wasting resources.

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

3.5.2 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'.[15] The application of substantive equality leads, therefore, to the reinstatement of equal opportunities between categories of persons, whose differences may cause adverse consequences. Equal opportunities, in other words, are the final end of substantive equality. Substantive equality implies the elimination of the adverse consequences coming from the differences existing between groups rather than of the differences themselves; substantive equality, as a consequence, demands the adoption of 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. Until 2012 we had data on the public financing of positive action measures: each year, the EONC (Equal Opportunities National Committee) prepared a programme to fix the targets for positive action measures to be financed and to monitor their implementation, however the last available yearly

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

programme dates back to 2012.[16] 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 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 six next 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 new 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] which emphasised 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.

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

[17] See: http://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.

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

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

Law 215 of 23 November 2012 introduced new regulations aimed at achieving gender equality in politics and in hiring procedures in public administration. One of the main interventions concerns the statutes of municipalities and provinces, which must now provide regulations to ensure (and not only to 'promote' as under previous legislation) the representation of both sexes in government bodies and in other corporate bodies (not elective ones) of the municipality or the province or in businesses and institutions depending thereon. Moreover, it is provided that the regulations governing the election of municipality and provincial councils and governing the appointment of the respective local government bodies must also respect the principle of gender equality and guarantee the representation of both sexes. In particular, as regards the election of the councils of local bodies, in the lists of candidates neither of the two sexes can be represented in a proportion higher than two thirds and if the statutes provide for the possibility to express two preferential votes, they cannot both go to candidates of the same sex. Moreover, if the list fails to respect this proportion, candidates of the overrepresented sex will be removed by the Electoral Commission so as to ensure the proportion mentioned above. 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 (which modifies Law 165/2004) has also been approved to increase gender equality in regional elections. This Law provides for specific measures that can be 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/sexual harassment 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 is regardless of the damage caused to the victim, specific behaviours that are to be considered as harassment or sexual harassment could be specified. In particular, it would be useful to clarify that both unwanted physical and psychological behaviour can fall within the notion of sexual harassment. Moreover, in order to fully comply with Article 10(g) of the ILO convention, it would be better to equalise resignation with discriminatory dismissal, including all legal consequences in terms of the right to reinstatement and the right to remuneration and compensation for damage, given that the victim 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 'workers', thus excluding any third parties present in the business.

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

3.6.3 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 sex/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.

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, pacts or provisions taken in relation to the employment relationship towards workers who are victims of harassment are null and void if adopted as a consequence of the worker's rejection of or submission to harassment on the ground of sex or sexual harassment' and that 'Any adverse treatment by the employer as a reaction to a complaint within the undertaking or to any legal proceedings aimed at enforcing compliance with the principle of equal treatment is regarded as discrimination on the ground of gender.'

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

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

3.6.6 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 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

[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.

[23] See on these issues: http://quotidianoentilocali.ilsole24ore.com/print/ACTDhdLB/0; https://www.altalex.com/documents/news/2020/01/20/consiglio-di-stato-apre-alla-pa-robot; https://www.agendadigitale.eu/sicurezza/algoritmi-per-le-decisioni-della-pa-quali-principi-seguire-le-sentenze/; https://www.altalex.com/documents/news/2020/01/20/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.

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

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 new 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 sexual harassment is also harmonised with EU legislation. In particular, Article 26 of Directive 2006/54/EC has been transposed in Article 50*bis* of the Equal Opportunities Code. In the national implementation, the emphasis in the 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 under the grounds of discrimination for sexual orientation and 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

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

orientation is a problem when these grounds are combined with existing grounds, because this prevents argument on the grounds in an intersectional or cumulative way as is required by the hypothesis on multiple discrimination (when age, disability, religion/belief and/or sexual orientation intersect outside employment).

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 training for management 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 normally 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 recent 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

[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/.

women.[31] With 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 new 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 Padova 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

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

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 Padova).

collective agreement itself to a specific project aimed at boosting productivity or to reward the strenuous nature of specific work.

The Turin Court of Appeal of 10 January 2018 deemed a clause of a collective agreement at the enterprise level to be discriminatory as it infringed Articles 3 and 37 of the Constitution, Article 25, Paragraph 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. 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 disabled persons, which is more equally used by workers of both sexes) among days to be reckoned for this purpose, meaning the link is not proven. The court of appeal also underlined that discrimination is not excluded by the fact that it 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 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 dependent employment relationship also applies to collaborations that take the form of mainly personal, continuous work services and 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 1981 held that the collective agreement bargained at the enterprise level that entitled only working women to a contribution to crèche expenses infringed the principle of equal treatment between male and female workers. Following the courts' reasoning, the contribution is linked to the array of duties that are a burden on both parents. A different interpretation would be in contrast with the constitutional principle of equality as it would involve 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. No overriding opinion has been recorded, which has called for the need for an actual comparator.

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

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

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

4.2.8 Other relevant rules or policies

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

4.2.9 Job evaluation and classification systems

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

4.2.10 Wage transparency[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 has been amended by Law 162/2021. It provides that the biennial report concerning the ratio of male and female employees in all job categories of a company will be compulsory for enterprises employing more than 50 workers (100 employees under the previous wording of the provision). Smaller companies will be enabled to submit the same report on a voluntary basis. The report will be filed online on the website of the Ministry of Labour and regional equality advisers 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 Office, the National Institute for Statistics (ISTAT) and the National Council for Labour and Economy (CNEL). A list of defaulting companies will 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, Paragraph 138 of Law 234/2021 provides financing for the certification system in order to reward companies, even those with less than 50 employees, that obtain the gender equality certification.

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.

[35] See Proposal for a Directive of the European Parliament and of the Council 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, COM/2021/93 final.

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

The European Commission's Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency has not yet been applied.

4.2.12 Other measures, tools or procedures

Under Article 1, Paragraph 138 of Law 234/2021, a intervention addressed the implementation of the principle of gender equality by setting at EUR 52 million in 2022 a fund allocated by the Minister of Labour 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 will be fixed by a Decree of the Prime Minister. The plan organization is now in progress.

4.3 Access to work, working conditions and dismissal

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

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

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

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

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

4.3.2 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. 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 nature (particularly strenuous) of the specific occupational activity. Even if the principle of proportionality is not directly considered, and the law does not provide that the exclusion of women must be 'essential' (to the protection of women's health), this exception has always been deemed to comply with the exceptions provided by EU law.

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

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, professional training and working conditions. In particular, discrimination is expressly forbidden in relation to marriage, family status or pregnancy, and motherhood or fatherhood, including through adoption.

[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).

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 a judgment of 27 May 1996, No. 172, ruled that an employer may dismiss a pregnant employee on the grounds of the negative result of the probationary period only if he can prove - or if there is objective evidence - that he did not know of the woman's pregnancy; otherwise, he must explain the reasons justifying the negative evaluation of the probationary period, in order to disprove that the reason for the dismissal was the pregnancy of the woman. Other decisions ruled that: the consequence of the discriminatory dismissal is the payment of retribution from the day of dismissal to that of the reintegration in service of the women, as the dismissal is null and void;[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

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[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.

[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*.*

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 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 substantial equality between men and women at work by removing obstacles which in practice prevent the achievement of equal opportunities; in particular, positive action must aim to eliminate disparities that affect women in education and professional training, in professional choices (both as regards labour relationships and self-employment), in working conditions and organisation, in activities, professional sectors and levels where they are underrepresented, and in the division of family and professional responsibilities between the two sexes.

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

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

In addition, 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. According to the Equal Opportunities Code (Article 48), the public administration holds a primary role in promoting positive action: indeed, public employers have an obligation to draw up three-year positive action plans, which can be sustained within budget limits. Many positive action plans are carried out in this context, which shows that positive action plans are implemented where they are encouraged through economic or legal incentives.

4.4 Evaluation of implementation

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

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

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

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

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

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

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

The European Commission's Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency has not yet been applied. However, there is Article 46 of the Equal Opportunities Code on the release of information on pay to individuals and other data at 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, professional 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 material scope (Article 14(1) Recast Directive 2006/54), Article 27 of the Equal Opportunities Code merely translates the wording of the Recast Directive and of

Article 4(1) of Directive 41/2010, except as regards vocational training where the prohibition on discrimination expressly includes both access to and the content of vocational training.

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

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

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

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

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

4.5 Remaining issues

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; facilitated tools for the regulation of housework services, babysitting, and care activities for the elderly; cut in taxes or contribution for employers aimed to facilitate the substitution of working mothers, their return to work and professional 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.

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 recently reformed as provided by the Family Act, by Decree No. 230/2021 (following the guidelines contained in Law 46/2021). The new measure replaces the various other pieces of legislation, such as tax allowances and the so-called bonus that was paid after giving birth, 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. On the whole, the reform modernises the Italian welfare system and makes it simpler, more transparent and more inclusive. 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 new 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 an automatic compensation for the next three years.

The COVID 19 pandemic had in particular negative consequences for women, since many women work in precarious working conditions that are especially vulnerable to economic shocks. Indeed, women are more likely to have temporary, part-time and precarious jobs than men. These jobs often result in lower pay, weaker legal protection and difficulties in accessing social protection. Levels of precarious work are particularly high among young women, low-skilled women and migrant women.

5 Pregnancy, maternity, and leave related to work-life balance for workers (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 sustaining motherhood and fatherhood, time for care and for vocational training, and coordination of hours in the town's public services (and its subsequent amendments). Law 53/2000 provides for the enactment of a policy aimed both at reconciling work and family life and helping social solidarity. In particular, Article 9 of Law 53/2000 provides an important measure for the promotion of the reconciliation of work and family life in the form of symmetrical positive action measures that can apply to both women and men.

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

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 facilities, such as kindergarten, crèches, school holiday camps and other school activities; and making these activities available to all. Moreover, there is a debate on how to improve the work-life balance among entrepreneurs, who have understood that a good work-life balance also improves workers' productivity, reduces health expenses, increases employees' loyalty and adds value to the firm's brand.[42]

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[41] See Masselot, A. (2018), *Family leave: enforcement of the protection against dismissal and unfavourable treatment*, European network of legal experts in gender equality and non-discrimination, available at https://www.equalitylaw.eu/downloads/4808-family-leave-enforcement-of-the-protection-against-dismissal-and-unfavourable-treatment-pdf-962-kb and De la Corte Rodríguez, M. (2022), *The transposition of the Work-Life Balance Directive in EU Member States: A long way ahead*, available at: https://www.equalitylaw.eu/downloads/5779-the-transposition-of-the-work-life-balance-directive-in-eu-member-states-a-long-way-ahead.

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

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.

5.2.2 Obligation to inform employer (Article 2 Pregnancy Directive)

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

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

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

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

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

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

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

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

[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.

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

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

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

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

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

5.2.7 Case law on the prohibition of night work

The Court of Cassation, in case No. 23807 of 14 November 2011, declared null the dismissal of a working mother of children aged less than three 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.

The issue of night work is open for women of flight crews: there has been discussion in case law on whether Article 53 of Decree No. 151/2001 or the sectorial specific legislation on working time, which makes no provisions for exemption from night work, can be applied to them.[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 to be equal to a discriminatory dismissal and the special remedy (reinstatement) provided by Article 18 of the Worker's Statute is enforceable (Article 54, Decree No. 151/2001). The same protection against dismissal that is provided for natural parents is granted to adoptive or foster parents until one year after the child has entered the family. There are no specific procedures.

Moreover, in response to the issue of 'blank resignation', Law 92/2012 changed Article 55, Paragraph 4 of Decree No. 151/2012. 'Blank resignation' refers to an undated resignation letter signed by a worker at the time of recruitment so as to be used by the employer to make the worker resign when needed (i.e. when pregnant). Often the employer makes recruitment conditional on signing such a letter. 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 of the Minister of Labour. This period now starts at the beginning of the pregnancy and ends when the child reaches the age of three. The same rule applies to adoptive parents or persons who have been given the official custody of a child from birth/entering the family. In the case of an international adoption,

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

the ban on dismissal provided by Article 54 of Decree No. 151/2001 is enforceable from the communication of the proposal by the association that is in charge of the case.

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

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

5.2.9 Redundancy and payment during maternity leave

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

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

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

Protection is granted during pregnancy, maternity leave, parental leave and for a period of 12 months following the date of confinement: a dismissal in this situation is considered to be equal to a discriminatory dismissal and the special remedy (reinstatement) provided by Article 18 of the Worker's Statute is enforceable (Article 54 Decree No. 151/2001). Article 54 of Decree No. 151/2001 allows a working mother to be dismissed only in four exceptional cases: a serious offence by the female worker; the cessation of the activities of the company; the end of a fixed-term contract; and the negative result of the probationary period if the ban on discrimination has not been infringed. In these cases the mother will continue to receive the maternity allowance, which is directly paid by the INPS (the National Institute for Social Security), except in the latter case. In these cases, employers must indicate substantiated grounds for the dismissal in writing. Indeed, general rules are enforceable that provide the obligation to indicate the substantiated grounds for the dismissal in writing (Article 2, Paragraph 2 of 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 the restitution of damages. It is up to the employer to provide evidence of the real reason for the dismissal in order to demonstrate that it is included in the four legitimate exceptions mentioned above.

5.2.11 Case law on the protection against dismissal

Some case law has been published regarding the interpretation of the exceptions to the ban on dismissal during pregnancy.[45] 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

[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.

positively ascertained and that she is pregnant. The Constitutional Court in case No. 172 of 27 May 1996 ruled that an employer may dismiss a pregnant employee on the grounds of the negative result of the probationary period only if he can prove – or if there is objective evidence – that he did not know of the woman's pregnancy; otherwise, he must explain the reasons justifying the negative evaluation of the probationary period, in order to disprove that the reason for the dismissal was the pregnancy of the woman. Other decisions ruled that: the consequence of the discriminatory dismissal is the payment of retribution from the day of dismissal to that of the woman's reintegration into work, as the dismissal is null and void;[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. The Tribunal of Florence of 12 December 2005 stated that if the resignation is not validated, the work relationship is not terminated and the employee, therefore, has the right to go back to work and to receive remuneration, plus compensation, currency revaluation and legal interest for the months in which they were kept out of work (in the same sense as the finding of the Tribunal of Milan of 12 July 2007). Other cases concern the relevance of being aware of the pregnancy for these rules to be enforced. The Court of Appeal of Florence, of 9 September 2006, ruled that Article 55 was enforceable despite the fact that the employer did not know about the pregnancy of the worker and the Tribunal of Treviso of 4 January 2007 ruled that Article 55 was enforceable only if the employee knew about her pregnancy when she resigned.

5.2.12 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 serious offence by the female worker; - the cessation of the activities of the company; - the end of a fixed-term contract; and - the negative result of the probationary period (if the ban on discrimination has not been infringed).	No

5.3 Maternity leave

5.3.1 Length (Article 8 of Directive 92/85)

Compulsory maternity leave, under Articles 16 and 20 of Decree No. 151/2001, lasts for five months: two to be taken before the birth, three after the birth. This entire period can be postponed by one month if a national health service specialist deems that there is no

[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.

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

5.3.2 Obligatory maternity leave

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

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

5.3.3 Legal protection of employment rights (Article 11(1) of Directive 92/85

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

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

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

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

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

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

5.3.4 Legal protection of rights ensured from the employment contract (Article 11(2) of Directive 92/85)

Pregnancy and maternity leave are counted as actual work as regards seniority, annual leave, the thirteenth month and must be deemed, for the purposes of promotion, to be a period of employment, unless any special requirements are laid down for the purpose by collective agreements (Article 22, Decree No. 151/2001). The same provision also applies when the compulsory maternity leave is anticipated or extended by the Labour Inspectorate or arises from the impossibility of transferring the worker from a risky job or from night work.[49] Furthermore, Law 208/2015, (Article 1, Paragraph 183) clarified that compulsory maternity leave must take into account the aim of the productivity bonus, meaning that the suspension of the working relationship in this period cannot jeopardise the mother's income in respect of wage incentives.[50]

5.3.5 Level of pay or allowance (Article 11(3) 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 leave, 'notional' contributions (contributions credited free of charge) are considered for pension rights and amounts. There is no ceiling to the allowance.

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

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

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

Maternity benefits do not require a minimum amount of national insurance contributions to have been paid: it is enough that the claimant was employed at the time the compulsory leave period began and no minimum length of service is required.[51]

5.3.7 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

[49] 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.

[50] Under Paragraph 635 of Article 1 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.

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

she would have been entitled during her absence. It also provides for the right to return to the same workplace or to another workplace in the same municipality and to work there until the child is one year old.

5.3.8 Legal right to share maternity leave

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

5.3.9 Case law

The Constitutional Court of 13 July 2018 ruled that Paragraph 3 of Article 24 of Decree No. 151/2001 on the protection of motherhood and fatherhood contradicts the Constitution. Article 24 extends the right to maternity allowance for the period of compulsory maternity leave to working mothers who, at the beginning of this period, are temporarily absent from work, or on leave from work with no right to remuneration or have been unemployed for less than 60 days. Under Paragraph 3 of Article 24, absences due to illness or an accident at work, leave due to care for a sick child, absence due to foster care, or periods of interruption of work in case of a vertical part-time contract,[52] are exceptions and not to be reckoned under the time limit of 60 days. The Constitutional Court ruled that paragraph 3, which does not include periods of leave to take care of disabled relatives in these exceptions, is not in compliance with Articles 3, 31 and 37 of the Constitution ensuring the principle of equality and the protection of the family and of motherhood. The Court underlined in its ruling that the remunerated period of leave to take care of a disabled relative, which is grounded on objective and strict requirements, must be included in the other exceptions provided by the law mentioned above as it responds to the need of assuring that the necessary care for disabled persons can be provided by their family. Not recognising the need to care for a disabled relative would also arbitrarily sacrifice the special protection granted by Article 37 of the Constitution to both the mother and the child as it would compel the mother to choose between taking care of the disabled person or returning to work to benefit from the maternity allowance. The judgment of the Constitutional Court, which added the period of leave to take care of disabled persons to the exceptions expressly laid down by paragraph 3 of Article 24, further strengthened the protection of maternity and was a necessary intervention (as stated by the Court itself) as case law could not merely add it to the list of exceptions by way of interpretation.

In sex discrimination cases, Article 40 of Decree No. 198/2006 provides for the partial reversal of the burden of proof: the Court of Appeal of Milano of 17 June 2009, ruled that when a pregnant women did not have access to work and alleged facts from which it may be presumed that there had been direct or indirect discrimination, then it was up to the employer to prove the absence of discrimination on the basis of pregnancy; the same decision awarded compensation for damages of one year's pay.

One of the main problems in relation to maternity leave is the consequences of taking the leave on future pay. The Court of Appeal of Turin recently deemed a clause of a collective agreement at the enterprise level to be discriminatory as it infringed Articles 3 and 37 of

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

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 to be eligible to receive additional remuneration as an incentive, and did not regard family-related leave, including compulsory maternity leave, parental leave and leave for illness as working time. Although the criterion is officially neutral, it results in indirect pay-discrimination (direct as far as maternity leave is concerned), since a higher percentage of female workers than male workers take family-related leave. Moreover, the company in this case had not provided a permissible justification regarding the requirement of 'real presence at work'. The employer was ordered: to cease the discrimination by regarding such leave as actual work with the aim of providing remuneration as an incentive; to pay the additional remuneration incentive to the claimants; and to enhance a plan to remove the discrimination where the change of the criteria mentioned above had to be included in future collective bargaining at the enterprise level. The latter was promoted by the intervention of the regional equality adviser, as it was a case of collective discrimination (in such cases the advisers can act on their own in court).

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

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

[53] Court of Appeal of Turin, 10.1.2018.

[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.

pregnant worker by an employment exchange; and the illegitimacy of pregnancy tests for access to work.[56]

5.3.10 Table on Maternity leave

Table 3 Maternity leave:

Duration	**Obligatory period**	**Possibility to share maternity leave?**	**Payment or allowance**	**Right to return after the end of maternity leave**
Five months	There are three possibilities: - two months before birth and three after birth; - one month before and four after birth; and - five months entirely after the birth.	Maternity leave is granted to the father after the birth for the whole length of the maternity leave or for the remaining period in special cases, that is: where the mother dies or becomes seriously ill; if the mother abandons the child; if the child is in the sole custody of the father	During the whole period of maternity leave, mothers are entitled to a daily allowance paid by the National Institute for Social Security (INPS), whose amount is 80 % of the average overall daily wag	A woman has a right 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

5.4 Adoption leave

5.4.1 Existence of adoption leave in national law

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

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

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

[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.

is enforceable from the communication of the proposal by the association that is in charge of the case. Article 56 of Decree No. 151/2001 also extends the same rights after the end of adoption leave, as provided for the maternity leave, to adoptive and foster parents until one year after the child has entered the family.

5.4.3 Case law

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

5.5 Leave in relation to surrogacy

5.5.1 Prohibition of surrogacy

In Italy, surrogacy constitutes a prohibited medical practice, punishable with imprisonment from three months to two years and a fine from EUR 600 000 to EUR 1 000 000.

5.5.2 Leave in relation to surrogacy

Surrogacy is prohibited so there is no leave available.

5.5.3 Case law on leave in relation to surrogacy

The ban on surrogacy was confirmed in 2017 by the Constitutional Court, which considered that the practice of surrogacy 'intolerably offends the dignity of women and undermines human relationships'.[57]

Another decision of the Constitutional Court in 2021 addressed the problem of the status of children born using surrogacy, which is prohibited by the Italian legal system.[58] In particular, the legal recognition of the child's bond with the non-biological parent or 'parent of intent', who shares the parental project without having given his own genetic contribution, has been discussed. The Court invited the legislature, in its discretion, to establish an adoption procedure suitable for safeguarding the interest of the child born abroad, from surrogacy, in the bond of filiation with the non-biological or intended parent. The attempt of the Court is that of reaching a balance between the relevant interests at stake: on the one hand, safeguarding the legitimate aim of the Italian legal system of discouraging the use of surrogacy, by not allowing the transcription of the foreign judicial provision; on the other hand, upholding the child's interest by enabling the bond with both members of the couple legally recognised.

5.6 Transposition of the Work-Life Balance Directive 2019/1158 in general[59]

5.6.1 Transposition of the Work-Life Balance Directive (WLB) by 1 January 2023

Directive 2019/1158 has been implemented by Decree No. 105/2022, which came into force on 13 August 2022. However, even before implementation, the system was fairly well aligned with the EU legislation and therefore the Decree provided only for 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, which can be split in different

[57] Corte Costituzionale 18 December 2017, No. 272.
[58] Corte Costituzionale, 9 March 2021, No. 33.
[59] De la Corte Rodríguez, M. (2022), *The transposition of the Work-Life Balance Directive in EU Member States: A long way ahead*, available at: https://www.equalitylaw.eu/downloads/5779-the-transposition-of-the-work-life-balance-directive-in-eu-member-states-a-long-way-ahead.

days but cannot be converted to hourly time off. Fathers can take this leave in the period from two months before to five months after delivery, both in case of birth and perinatal death of the child. It is an autonomous father's right which is raised to 20 days in the event 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 to be reckoned as length of service also as regards retirement requirements, regardless of the length of service of the worker.

An administrative sanction from EUR 516 up to EUR 2 582 will be provided 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 one year old will also be extended to the new paternity leave.

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

The reform will also provide for an increase from six to nine months of the period of parental leave covered by an allowance of 30 % of the last monthly remuneration. 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 the parents as an alternative to each other. Parental leave will have to be reckoned as length of service and cannot reduce holidays and annual remuneration, except incentives that depend on the real 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 seriously disabled children will be entitled to this allowance for the 3 years of parental leave that they can take up until the child reaches the age of 12.

There are also further improvements in the area of self-employment. The right to a three-month parental leave to be used within the first year of the child will be extended to autonomous working fathers as well. The possibility to anticipate the maternity allowance from two months before the birth will be provided for professionals as well in cases where maternity is at risk.

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

Article 3 provides for some amendments to Law 104 of 5 February 1992 on assistance, social integration and rights of disabled people. A general ban on discrimination will protect workers who benefit from different rights provided by this Law both as disabled persons and 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, as well as the attempt of conciliation provided 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 seriously disabled relatives, including partners in a civil union and cohabitants in fact. Moreover, these rights will be divisible between different caregivers to ensure a better balance of family duties. Priority in the access to 'smart working' (flexible or remote working) will also be granted to the caregivers mentioned above. Protection for the use of these rights has also 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 provided for working parents.

Article 4 provides for some amendments to Law 81 of 2017 on measures for the protection of non-entrepreneurial self-employment and measures to promote smart working. Parental leave for autonomous workers will become non-transferable: 3 months for each parent, which can be added to another 3 months, which can be used by the parents as an alternative to each other, up to the child reaching 12 years of age.

Public and private employers signing 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 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.

Article 5 provides for some amendments to Law 81/2015 on the ruling of employment contracts and revision of the legislation on tasks, pursuant to Article 1 Paragraph 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 the reform, the same contract conversion will also 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 Prime Minister's Office. It is expected to ensure wide-ranging monitoring especially as regards the impact of the reform on gender equality in the labour market and on 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 and 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 the leave); 3) provisions on parents with a disability as regards parental leave 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 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 our legislation: therefore, Article 2 of the Directive has been satisfactorily transposed in national law.

5.6.2 Short description of child-related leave

Italy has the following child-related types of leave:

1. Maternity leave: Maternity leave provisions address those working in the private and public sectors, self-employed persons and professionals; part-time workers, fixed-term contract workers or persons with a contract of employment or employment relationship with a temporary agency are also covered. 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. Compulsory maternity leave, under Articles 16 and 20 of Decree No. 151/2001, lasts for five months: two to be taken before the birth, three after the birth. This entire period can be postponed by one month if a national health service specialist deems that there is no risk to the

mother and to the unborn child, or it can be brought forward when the worker's job involves a risk to the pregnancy. Alternatively, women can take the five months maternity leave entirely after the birth, provided that a national health service specialist deems that there is no risk to the mother and to the unborn child (Article 1, Paragraph 485 of Act 145/2018, which amended Article 16 of Decree No. 151/2001). During the whole period of maternity leave, mothers are entitled to a daily benefit paid by the National Institute for Social Security (INPS). The amount of the maternity benefit is 80 % of the average overall daily wage. During the leave, figurative ('nominal') contributions are taken into account for pension rights and amounts. There is no ceiling to the allowance. Decree No. 151/2001 extends the same provisions on maternity leave and the respective rights/protection to national and international adoption and official custody of a child.

2. Paternity leave: Fathers are entitled to 10 days' compulsory paid paternity leave, which can be taken in the period from two months before to five months after delivery both in case of birth and perinatal death of the child. The leave can be split in different days but cannot be converted into hourly time off (Decree No. 105/2022). The latter can also be used at the same time as the mother's compulsory leave. It is an autonomous father's right, which is raised to 20 days in the event of twins (Decree No. 105/2022). This leave addresses 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 agency are also covered. The leave is also granted in the case of national and international adoption or fostering. There is no work, contributions and/or length of service requirement in order to benefit from paternity leave. During the leave, a benefit equal to the worker's previous pay is paid. Periods of paid leave are taken into account as regards length of service and for pension purposes.

3. Parental leave: The provisions on parental leave provided by Decree No. 151/2001, as modified by Decree No. 105/2022, 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 agency are also covered; Decree No. 105/2022 has also extended the main provisions on parental leave to para-subordinated workers (i.e. self-employed workers who have a status very similar to employed workers). There is no work, contributions and/or length of service requirement in order to benefit from parental leave. Parental leave is also available in cases of national and international adoption and legal custody of children. Parental leave lasts for a total of 10 months for both parents. As a general rule, each parent cannot take up more than 6 months of the leave; single parents are entitled to 11 months. It may be taken by either the father or the mother during the first 12 years of the child's life, or during the 12 years after the child entered the family in the case of adoption or fostering (however the leave cannot be taken when the child comes of age). If a working father decides to take no less than 3 months off from work, the total time allowed to both parents is 11 months; the recent decree extended the 11 months as a maximum duration to single parents or to parents who have been given the exclusive custody of the child (Decree No. 105/2022). Parental leave can be taken for one continuous period or various periods.

The period of parental leave covered by an allowance of 30 % of the last monthly remuneration is extended by Decree No. 105/2022 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 the parents as an alternative to each other. As a consequence, if both parents take up non-transferable parental leave and one of them takes up the alternative parental leave as well, the period covered by the allowance is nine months. Single parents are entitled to a maximum of 11 months of parental leave and 9 months are covered by the allowance. Article 1, Paragraph 359 of Law 197/2022 increased the amount of the monthly allowance up to 80 % of the last monthly remuneration: parents, as an alternative to each other, can benefit from this increase for the maximum total length of one month per child aged up to six years. Parents of seriously disabled children are entitled to the allowance mentioned above for the three years of parental leave they can take up until the age of 12 of the children, on condition that the child is not hospitalised in a specialist institution (unless the presence of the parents is required by doctors) (Article 33 of Decree No. 151/2001).

Within the child's age of 12, parental leave longer than 9 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).

Notional contributions, that is contributions credited by the state, are taken into account for pension rights and amounts. This also applies to any period of extended leave for parents of severely disabled children.

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

5.7 Paternity leave

5.7.1 Paternity leave in national law (Article 16 Recast Directive and Article 3(a) and 4 WLB Directive)

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, both in the event of birth and perinatal death of the child. It is an individual father's right, which is raised to 20 days if there are twins and can be used together with the mother's leave. The latter can also be used at the same time as the mother's compulsory leave. The duration is expressed in working days.[60] Moreover, fathers are entitled to one day's paid optional leave, (to be taken from the mother's allocation), within the first five months following the child's birth.

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

These types of leave address 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 agency are also covered. The leave is also granted in the case of national and international adoption or fostering. There are no provisions covering the rights of the equivalent second parent.

5.7.2 Paid paternity leave (Article 8(1) and (2) WLB)

[60] 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 for 2020); Article 1, paras 363 and 364, Law 178/2020 (Budget Act for 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 is covered by an allowance of 100 % of the last monthly remuneration and is to be reckoned as length of service also as regards retirement requirements, disregarding the length of service of the worker. Possibly, a written notice of five days from the expected date of delivery is to be given to the employer by the worker, without prejudice to the best favourable conditions established by collective bargaining on this point (Decree No. 105/2022).

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

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

5.7.3 Protection against unfavourable treatment and dismissal (Article 16 of the Recast Directive)

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

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

5.7.4 Case law

A male worker contested his dismissal, claiming that it was discriminatory under Article 35 of Decree No. 198/2006, as it took place within the year following his marriage. He argued that the ban on dismissal during the first year of marriage to protect against discrimination applies to male workers in the same way as to female workers. In fact, although Article 35 expressly refers to female workers, it aims to protect the 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 and 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.[61] This provision is the expression of the specific

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

constitutional protection awarded to working women. The Court underlined that the protection against discriminatory dismissal on grounds of marriage had been introduced in the 1960s to strengthen the protection of women's employment rights. This specific protection is perfectly in line with the social reality, since employers tend to dismiss recently married female workers as they expect long absences from work due to subsequent pregnancies. Moreover, it responds to the same objectives as the constitutional principles of both the protection of motherhood and equality, which provide that maternity must not be an obstacle to women's effective participation in the labour market. Consequently, this stronger protection awarded to women is not discriminatory, even under EU law. This can justify a differential treatment as men are not in an analogous situation. The Court underlined once again the principle ruled by the Constitutional Court, following which a different protection based on gender cannot be deemed to be discriminatory in itself. It mainly shed light on the development of the protection of female workers as mothers in Italian legislation in order to clarify the reason for excluding male workers from the personal scope of Article 35, and the consistency of this exclusion with the principle of equal opportunities. In particular, it noted the legitimacy of maternity protection measures as an instrument to achieve substantial equality for working women, in line with well-established CJEU case law.[62]

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

5.7.5 Table on paternity leave

Table 4: Paternity leave

Who is entitled?	**Duration**	**Possibility to share paternity leave?**	**Payment or allowance**	**Qualifying conditions for allowance**
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 agency. The leave is also granted in the case of national and international adoption or fostering.	10 days compulsory paid paternity leave	Only for the one day's fathers optional leave, (to be taken from the mother's allocation), within the first five months following the child's birth)	Allowance of 100 % of the last monthly remuneration	None

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

5.8 Parental leave

5.8.1 Implementation of Directive 2019/1158 (Articles 3, 5, 8, 20(1) and 20(2) Work-Life Balance Directive)

Directive 2019/1158 has been implemented by Decree No. 105/2022, which came into force on 13 August 2022.

5.8.2 Parental leave in national law (Article 5(1) and (4) WLB Directive)

The provisions on parental leave provided by Decree No. 151/2001, as modified by Decree No. 105/2022, 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 agency are also covered. Decree No. 105/2022 has also extended the main provisions on parental leave to para-subordinated workers (i.e. self-employed workers who have a status very similar to employed workers). There is no work, contributions and/or length of service requirement in order to benefit from parental leave. Parental leave is also available in cases of national and international adoption and legal custody of children. Parental leave lasts for a total of 10 months for both parents. As a general rule, each parent cannot take up more than 6 months of the leave. It may be taken by either the father or the mother during the first 12 years of the child's life, or during the 12 years after the child entered the family in the case of adoption or fostering (however the leave cannot be taken when the child comes of age). If a working father decides to take no less than three months off from work, the total time allowed to both parents is 11 months; the recent decree extended the maximum duration to 11 months for single parents and parents who have been given exclusive custody of the child (Decree No. 105/2022).

5.8.3 Individual nature of the right to parental leave and transferability (Article 5(2) WLB Directive)

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

5.8.4 Period of notice (Article 5(3) WLB Directive)

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).

5.8.5 Postponement of parental leave (Article 5(5) WLB Directive)

Parental leave cannot be postponed. Law 228/2012, however, provided that special arrangements for the application of parental leave – including the possibility to postpone the granting of the leave by the employer – can be stipulated by collective agreements, for the security/defence sector and the fire service. Moreover, the Ministry of Labour issued a lawful interpretation 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 the parental leave, the worker's interest has priority, although it opened up the possibility for monthly agreements with the worker or union representative aimed at reconciling the right to parental leave with the needs of the enterprise.

5.8.6 Forms of parental leave (Article 5(6) and (7) WLB Directive)

Parental leave can be taken for one continuous period or various periods. The means of application of the parental leave on an hourly basis are stipulated by collective agreements. In the event of non-regulation, by collective bargaining, even at company level, of the methods for using parental leave on an hourly basis, each parent can choose between daily and hourly use. Use 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.

5.8.7 Special rules and exceptional conditions for parents of children with a disability or long-term illness (Article 5(8) WLB Directive)

Under Article 33 of Decree No. 151/2001 an extension of parental leave for up to three years in total during the first 12 years of the child's life is provided on condition that the child is not hospitalised in a specialist institution (unless the presence of the parents is required by doctors). This leave can be taken for a continuous period or during various periods and is an alternative to the legally sanctioned rest periods for the parents of disabled children (amounting to two hours paid rest each day, or three days paid rest each month). The time off/leave is paid by the employer, who then deducts the amount from what is owed to the relevant 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. The benefit during this period is the same as the last salary earned, up to an annual ceiling. Notional contributions are provided (Article 42, Paragraph 5 of Decree No. 151/2001).

5.8.8 Paid parental leave (Article 8(1) and (3) WLB Directive)

The period of parental leave covered by an allowance of 30 % of the last monthly remuneration was extended from six to nine months by Decree No. 105/2022. 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 the parents as an alternative to each other. As a consequence, in the event that both parents take up non-transferable parental leave and one of them takes up the alternative parental leave as well, the period covered by the allowance is nine months. Single parents are entitled to a maximum of 11 months of parental leave and 9 months are covered by the allowance. Article 1, Paragraph 359 increased the amount of the monthly allowance up to 80 % of the last monthly remuneration: parents, as an alternative to each other, can benefit from this increase for the maximum total length of one month per child aged up to six years.

Parents of seriously disabled children are entitled to the allowance mentioned above for the three years of parental leave they can take up until the child reaches the age of 12. There are no qualifying conditions for the payment of the allowance just described.

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

Until the child reaches the age of 12, periods of parental leave longer than 9 months are 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 the INPS (National Institute for Social Security). There are no ceilings.

5.8.9 Case law

Most of the cases on parental leave, which are very few, concern the relationship between the leave and the employer's organisation of work. For example, 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 activity, which was of public interest. On the other hand, the Council of State ruled that a firm's organisation cannot interfere with the enjoyment of parental leave, as this is specifically targeted at the care of children.[63] Similarly, the Court of Cassation has stated that parental leave is linked to the care of children and that it cannot be used to substitute the spouse at work.[64]

5.8.10 Table on parental leave

Table 5: Parental leave

Duration and period	**Possibility to share parental leave?**	**Flexibility (e.g. full-time, part-time, piecemeal?**	**Payment or allowance?**	**Qualifying conditions for payment or allowance?**
Parental leave lasts for a total of 10 months for both parents. Each parent cannot take up more than 6 months of the leave. It may be taken by either the father or the mother during the first 12 years of the child's life, or during the 12 years after the child entered the family in the case of adoption or fostering. If a working father decides to take no less than 3 months off from work, the total time allowed to both parents	Parental leave is an individual right for each of the parents. As the total period of parental leave is 10 months, and the total for each parent is 6 months, the result is that 2 months of leave can be transferred from one parent to the other; in this case the 'donor parent' retains the right to 4 months of leave for his/her own use.	Parental leave can be taken for one continuous period or various periods. It can be taken on an hourly or daily basis.	Allowance of 30 % of the last monthly remuneration for 9 months; each parent is entitled to an autonomous, non-transferable, right to 3 months remunerated parental leave and further three months can be used by the parents as an alternative to each other. Art. 1, para 359 increased the amount of the monthly allowance up to 80 % of the last monthly remuneration: parents, as an alternative to each other, can benefit from this increase for the maximum total length of 1 month	No qualifying conditions except for parental leave longer than 9 months (but no longer than 10/11 months), which are 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.

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

is 11 months; the maximum duration is extended to 11 months for single parents and for parents who have been given the exclusive custody of the child.			per child aged up to 6 years. Before the child's 12th year, parental leave longer than 9 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.	

5.9 Carers' leave

5.9.1 Carers' (or care) leave in national law (Articles 3(1)(c), (d) and (e) and 6 WLB Directive)

Italy has different types of care leave in place.

According to Articles 47 to 52 of Decree No. 151/2001, both parents, alternatively, may take time off from work if a child younger than three becomes ill; the leave can last for the whole duration of the child's illness (without any limits). The parents, alternately, may also take up to five days off from work per annum if a child aged between three and eight becomes ill. Here 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 has an age between 6 and 12 years, the leave is available during the first 3 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.

Refusal, opposition, or obstacle to the exercise of the rights to care leave are punishable with an administrative sanction of EUR 516 to EUR 2 582. These provisions may overlap with the right to 'time off from work on grounds of *force majeure*', as a child's illness can be regarded as a ground of *force majeure*.

Article 42, Paragraph 5 of Decree No. 151/2001 states that workers in the private or public sector who take care of a severely disabled cohabiting spouse who is not hospitalised (unless continuous assistance is required in hospital) may take a continuous or split period of up to two years off from work. The disability is defined by the medical commission of the local service of the NHS (or by the INPS, when the region has delegated it). If there is no cohabiting spouse, then this right belongs to the relatives of the disabled person. So here the extended family and the de facto family are taken into consideration, i.e. 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 impossibility 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. This two-year period may be used only once in an entire working life.

Article 33 of Law 104/1992 states that workers in the private or public sector who take care of a severely disabled relative who is not hospitalised are granted three days of leave a month (also continuous). Both parents, including adoptive parents, of a severely disabled child are entitled to this leave and can use it alternately. The leave also applies to the guardian of a severely disabled person. The disability is defined by the medical commission of the local service of the NHS (or by the INPS, when the region has delegated it). Here the extended family and the de facto family are taken into consideration, i.e. 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 impossibility of those closest. Decree No. 105/2022 extended the three-day-a-month time off 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, to ensure a better balance of family duties. Cohabitation is not necessary.

Decree No. 105/2022 modifies Law 104/1992 as regards caregivers' rights. Article 3(1)(b) of the Decree states that working mothers, or alternatively, working fathers (including adoptive ones), of a seriously disabled child are entitled to benefit from two hours a day of time off, until the child is aged three, as an alternative to the extension of the parental leave up to three years.

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 (i.e. a) family needs deriving from the death of one person; b) situations that involve a particular commitment of the employee or his/her family in the care or assistance of a person; c) situations of serious personal hardship, with the exception of illness, which the employee himself/herself incurs; d) particular pathologies listed by the Decree), which can be taken all at once or in parts and may be used only once in an entire working life. Here the extended family and the de facto family are taken into consideration, i.e. 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 impossibility of those closest. 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.

5.9.2 Payment or allowance

Under Articles 47 to 52 of Decree No. 151/2001, leave of absence for a sick child is unpaid. However, notional contributions are calculated when the child is younger than three. These are reduced when the child is between three and eight, but the amount can be fully made up through the redemption of contributions. Periods of leave of absence for a sick child count toward a worker's length of service, but they do not count as regards paid or unpaid holidays and Christmas bonuses.

Under Article 42, Paragraph 5 of Decree No. 151/2001 (workers who take care of a severely disabled cohabiting spouse/relative who is not hospitalised), the benefit during this period is the same as the last salary earned, up to a maximum of EUR 43 579 per year, but this figure is constantly reviewed. The period of leave is covered by notional contributions within a ceiling, but it does not count towards the length of service. The leave is paid by the employer, who then deducts the amount from contributions owed to the relevant welfare agency.

Under Article 33 of Law 104/1992 (workers in the private or public sector who take care of a severely disabled relative or children who is not hospitalised), a benefit equal to the claimant's normal wage is paid. The period of leave is covered by figurative/notional contributions. A reduced form of notional contribution calculations is applied to this benefit, but a redemption of contributions can be made to fill the gap that is left.

Finally, Article 4 of Law 53/2000 provides for an unpaid leave.

5.9.3 Case law

In 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 of Article 4 of Law 53/2000 must be counted towards the length of service; indeed, the norm that excludes this period from the length of service was regarded by the court as unconstitutional as it infringes Directive 2000/78/EC as interpreted by the CJEU in *Coleman*, which stated that the ban on discrimination on the ground of disability is to be applied to both the disabled person and the caregivers of the disabled person.[65]

5.9.4 Table on carer's leave

Table 6: Carer's leave

Purpose(s) of leave	**Maximum period of leave**	**Compensation?**	**Beneficiaries (persons taken care of)**	**Other relevant information**
According to Articles 47 to 52 of Decree No. 151/2001, both parents, alternatively, may take time off from work if a child younger than three becomes ill; the parents, alternately, may also take up to five days off from work per annum if a child aged between three and eight becomes ill. 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 between 6 and 12 years old, the leave is available	Under Articles 47 to 52 of Decree No. 151/2001, the leave can last for the whole duration of the child's illness (without any limits); in case of children aged between three and eight who become ill, the leave is equal to five days off from work per annum. Under Article 42, Paragraph 5 of Decree No. 151/2001, leave is a continuous or split period of up to two years off from work. The duration is expressed in calendar weeks.	Under Articles 47 to 52 of Decree No. 151/2001, leave of absence for a sick child is unpaid. Under Article 42, Paragraph 5 of Decree No. 151/2001, the benefit is the same as the last salary earned, up to a maximum of EUR 43 579 per year, but this figure is constantly reviewed. Under Article 33 of Law 104/1992, a benefit equal to the claimant's normal wage is paid. Article 4 of Law 53/2000 provides for unpaid leave.	Articles 47 to 52 of Decree No. 151/2001 provide time off from work when a child younger than three becomes ill. Article 42, Paragraph 5 of Decree No. 151/2001 is addressed to workers who take care of a severely disabled cohabiting spouse/relative who is not hospitalised. Article 33 of Law 104/1992 is addressed to workers who take care of a severely disabled relative or children who are not hospitalised.	None

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

during the first 3 years after the child enters the family. Article 42, Paragraph 5 of Decree No. 151/2001 states that workers who take care of a severely disabled cohabiting spouse who is not hospitalised (unless continuous assistance is required in hospital) may take leave. Article 33 of Law 104/1992 states that workers who take care of a severely disabled relative who is not hospitalised are granted leave. Article 4 of Law 53/2000 (as implemented by Ministerial Decree No. 278/2000) provides for unpaid leave for serious family reasons.	Under Article 33 of Law 104/1992, the leave lasts three days a month (also continuous). The duration is expressed in working days. Article 4 of Law 53/2000 provides for two years of leave for serious family reasons, which can be taken all at once or in parts and may be used only once in an entire working life. The duration is expressed in calendar weeks.		Article 4 of Law 53/2000 provides leave for serious family reasons.	

5.10 Time off for *force majeure*

5.10.1 Time off for *force majeure* (Article 7 WLB Directive)

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 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. The entire wage for the days of leave is paid by the employer and not by the publicly financed social security. The implementation of the WLB Directive is here scarce.

5.10.2 Case law

There is no case law on this issue.

5.10.3 Table on time off for *force majeure*

Table 7: Time off for *force majeure*

Purpose of time off	**Maximum period of time off**	**Compensation?**	**Other relevant information**
Death or serious illness of a spouse or of another relative in the second degree, whether or not they lived or live together, or of anybody who belongs to the registered family of the employee	Three days off work per year	The wage for the days of leave is paid by the employer and not by the publicly financed social security	None

5.11 Flexible working time arrangements (FWA)

5.11.1 Right to adjust working patterns (Articles 3(1)(f) and 9 WLB Directive)

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, Paragraph 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, Paragraph 4 of Decree No. 79/1997, the worker has the right to return to full-time work after two years.

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

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. The act, which applies to both the private and public sectors, sets out a very soft framework and is mainly aimed at boosting the widespread adoption of smart working. The implementation of flexible working relationships will rely almost entirely on an individual agreement with regard to central issues, such as the duration of the working arrangement, the employer’s power of control and management, the 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 that of increasing productivity and furthering a reconciliation of work with family life. These provisions were amended by Article 1, Paragraph 486 of Decree No. 45/2018 (Budget Act for 2019): according to this norm, both public and private employers who sign smart working agreements must give priority to working mothers within three years after the end of the compulsory maternity leave and to working parents of seriously disabled persons. The decision of the legislature to entitle only working mothers and not working fathers, too, to priority in accessing smart working is a step backward in what had been the progressive extension to fathers of the mother's right to take care of children. Decree No. 105/2022 however has modified this provision. In particular, public and private employers signing agreements on smart working will be required to give priority to the request made by workers with children up to 12 years of age or without any age limit in the case of seriously disabled children. 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 the access to smart working to workers in the private or public sector who take care of a severely disabled relative 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 provided to working parents.

Finally, Article 8 Paragraph 7 of Decree No. 81/2015, provides that private and public workers can apply, for one time 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. Here the employer is required to proceed with the 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 provided to working caregivers to partners in a civil union and de facto cohabitants. Under the reform, the conversion is protected by the ban on discrimination.

5.11.2 Relative right (Article 9(2) WLB Directive) to FWA

Rights to FWA are relative, apart from one case: that of Article 8 Paragraph 7 of Decree No. 81/2015, according to which the worker can apply, for one time 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.

5.11.3 Absolute right to FWA

The sole case of absolute right is Article 8 Paragraph 7 of Decree No. 81/2015, according to which the worker can apply, for one time 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. Here the employer is required to proceed with the conversion within 15 days of the request, so this is an absolute right.

5.11.4 Duration (Article 9(1) and (3) WLB Directive) of FWA

The duration of FWA is not subject to limitation, except for two hypotheses. These are, first, Article 8 Paragraph 7 of Decree No. 81/2015, according to which the worker can apply, for one time 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; 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 national contractual agreement of 23 March 2000, a minimum period of teleworking is agreed in the project.

5.11.5 Other legal rights to flexible working arrangements

Part-time work is mainly addressed as a reconciliation measure in certain policies. For instance, Article 9 of Law 53/2000 provides for the allocation of a part of the Family Fund to public bodies (such as local health units and hospitals), and to private businesses and associated businesses (with priority) that enforce collective agreements concerning targeted positive action by adopting a flexible working schedule through different measures, including part-time work.

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

Article 4 of Law 53/2000 states that in cases of the certified serious illness of the spouse, the cohabitant or relatives within the second degree, the worker can either take up to three days a month in time off or reach an agreement with the employer to modify his or her working conditions (i.e. part time, telework, or a change of workplace, etc).

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

Finally, the Minister of Labour and Social Policies, together with the Minister of Economics and Finance, issued a Decree on 12 September 2017 to implement Article 25 of Decree No. 80/2015 on the allocation of resources for measures of reconciliation between family and working life. The decree sets criteria entitling employers who can demonstrate that they promote reconciliation measures through company-wide collective agreements to ask for a reduction in their social contributions. Measures must cover parenthood (an extension of paternity leave and/or the integration of the respective allowance, crèches, e-learning for employees returning to work, vouchers for babysitting services), organisation (smart working, flexible working hours, part-time work and the transfer of holiday leave) and enterprise welfare (offers of time-saving services, offers of care services, vouchers for care services). The collective agreement must provide two measures and at least one must be included in the first two areas to entitle the employer to access the benefit. Moreover, the intervention must be innovative and grant better conditions compared to previous agreements and concern at least 70 % of the workforce employed during the year before the application.[66]

[66] Funds have been allocated to sustain the experimental measures in 2016-2018 (EUR 55.2 million for 2017 and EUR 54.6 million for 2018). 20 % of the fund will be shared equally among all employers while 80 % will be shared in proportion to the workforce that they employed during the year before the application. Employers can participate only once given that it is a pilot scheme.

5.11.6 Case law

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

5.11.7 Table on flexible working arrangements (FWA)

Table 8: FWA, including remote working arrangements, flexible working schedules, or reduced working hours

Right to adjust working patterns	Workers entitled	Absolute or relative right	Limited duration and right to return to the original pattern	Qualifying conditions
According to Article 1, Paragraph 58 of Law 662/1996, the public administration can authorise a shift from full-time work to part-time work, within 60 days from the request	Public workers	Relative right	The worker has the right to return to full-time work after two years	Right provided on condition that it does not clash with organisational needs
Article 4 of Law 191/1998, Presidential Decree No. 70/1999 and national contractual agreement of 23 March 2000 provide telework	Public workers	Relative right	The worker has a right to return to the prior working arrangements and to the same workplace, after the agreed minimum period of teleworking provided in the project has elapsed	Working arrangements must be authorised by the employer as part of a project geared towards enhancing the quality and efficiency of services. There are priorities stated by law with reference to reconciliation.
Articles 15 to 20 of Law 81/2017 provide for the regulation of smart working	Private and public workers	Relative right	Duration of working arrangement provided by the individual contract. There is a right to return to the same job provided at the end of the smart working period.	The implementation of flexible working relationships will rely almost entirely on an individual agreement. There are priorities stated by law with reference to reconciliation.

Article 8 Paragraph 7 of Decree No. 81/2015, provides that workers can apply, for one time only, in place of parental leave or within the limits of the leave still due, for the transformation of the full-time employment relationship into a part-time one	Private and public workers	Absolute right	Workers can apply in place of parental leave or within the limits of the leave still due. There is a right to return to the same job provided at the end of the part time period.	Workers can apply for one time only

5.12 Legal protection provisions in the Work-Life Balance Directive 2019/1158

5.12.1 Maintenance of rights acquired or in the process of being acquired by the worker (Article 10(1) WLB Directive)

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

Maintenance of rights acquired or in the process of being acquired by the worker is not granted under Article 42, Paragraph 5 of Decree No. 151/2001 (workers who take care of a severely disabled cohabiting spouse/relative who is not hospitalised), as it is not expressly provided by legislation, which states that the leave does not count towards the length of service.

Finally, maintenance of rights is not granted under Article 4 of Law 53/2000 (two years’ unpaid leave for serious family reasons), as it is not expressly stated by legislation, which states that the leave does not count towards the length of service.

Maintenance of rights is provided in all the other cases, according to the relevant legislation, that is: Article 33 of Law 104/1992, which states that workers who take care of a severely disabled relative who is not hospitalised are granted leave; Articles 47 to 52 of Decree No. 151/2001, according to which both parents, alternately, may take time off from work if a child becomes ill.

5.12.2 Right to return to the same or an equivalent job (Article 10(2) WLB Directive)

The right to return to the same or an equivalent job is not granted under Article 42, Paragraph 5 of Decree No. 151/2001 (workers who take care of a severely disabled cohabiting spouse/relative who is not hospitalised), as it is not expressly stated by legislation.

This right is not provided either under Article 4 of Law 53/2000 (two years’ unpaid leave for serious family reasons), as it is not expressly stated by legislation.

This right is however provided in all the other cases, according to the relevant legislation, that is: paternity leave; parental leave; Article 33 of Law 104/1992, which states that workers who take care of a severely disabled relative who is not hospitalised are granted leave; Articles 47 to 52 of Decree No. 151/2001, according to which both parents, alternately, may take time off from work if a child becomes ill.

5.12.3 Status of employment or employment relationship (Article 10(3) WLB Directive)

The employment relationship is suspended during parental leave, paternity leave as well as carers' leave and all the other leaves. During the leave, the continuity of entitlements to social security covered under the different schemes, in particular healthcare, is provided.

During the periods of parental leave, for the first six years of the child's life (or during the first six years from the day that the child enters the family in cases 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 severely disabled children). For any leave taken after the child reaches the age of six, or over the maximum period of six months, notional contribution calculations for pension purposes are reduced, but the amount can be fully supplemented through the redemption of contributions.

During the 10 days of paternity leave, the legislation provides for notional contributions (Article 30 Decree No. 151/2001, as modified by Decree No. 105/2022).

Under Articles 47 to 52 of Decree No. 151/2001 (time off from work when a child younger than three becomes ill), notional contributions are calculated when the child is younger than three. These are reduced when the child is between three and eight, but the amount can be fully made up through the redemption of contributions.

Under Article 42, Paragraph 5 of Decree No. 151/2001 (workers who take care of a severely disabled cohabiting spouse/relative who is not hospitalised), the period of leave is covered by notional contributions within a ceiling.

Under Article 33 of Law 104/1992 (workers in the private or public sector who take care of a severely disabled relative or children who is not hospitalised), the period of leave is covered by figurative/notional contributions, although a reduced form of notional contribution calculations is applied to this benefit, but a redemption of contributions can be made to fill the gap that is left.

Under Article 4 of Law 53/2000, notional contributions are not applied.

In the hypothesis of *force majeure* leave under Article 4 of Law 53/2000 (leave for death or serious illness up to three days off from work per year), employers pay the normal wage, including social security contributions.

5.12.4 Prohibition of discrimination (Article 11 WLB Directive)

As regards parental and paternity leave: 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 or paternity 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. In general, 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 is also provided as a remedy in the event of established direct or indirect discrimination. Administrative sanctions are provided for the protection of motherhood and fatherhood. Another amendment to Decree No. 151/2001 made by Decree No. 105/2022 widens the application of administrative sanctions from EUR 516 to EUR 2 582 to all cases of infringement of different rights, including the right to take up two hours a day off work and to parental leave for seriously disabled children.

As regards care leave under Article 47 to 52 of Decree No. 151/2001 (time off from work when a child younger than three becomes ill), the protection against discrimination mentioned above can be applied; moreover, refusal, opposition, or obstacle to the exercise of the rights to these periods of leave are punished with an administrative sanction.

As regards care leave under Article 42 Paragraph 5 of Decree No. 151/2001 (workers who take care of a severely disabled cohabiting spouse/relative who is not hospitalised), refusal, opposition, or obstacle to the exercise of the rights to these periods of leave are punished with an administrative sanction.

As for the other types of care leave, care for *force majeure* and FWA, there are no sanctions provided in cases of infringement.

However, Decree No. 105/2022 made some changes to the types of leave laid out in Law 104/1992 on disability-related care: a general ban on discrimination protects workers who benefit from different rights provided by this Act both as disabled persons and caregivers. A special procedure provided by Article 28 of Law No. 150/2011 (including an urgent procedure and the partial reversal of proof) becomes enforceable to these disputes, as well as the attempt of conciliation provided by Article 410 of the Civil Procedure Code.

The existing penalties are effective, proportionate and dissuasive. There are in these cases enough measures at national level to ensure that penalties are implemented. In cases where penalties have not been provided, there is a lack of awareness of the legislature and an infringement of Directive 1158/2019.

However, Decree No. 105/2022 has provided other punitive measures in combination with the new gender equality certification system established by Law No. 162/2021. 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 81/2017 and Decree No. 81/2015 to ensure the conciliation of working and care duties, the gender equality certification cannot be awarded. In most cases this measure adds to 'traditional' ones, such as administrative or penal sanctions that already punished infringements against parents and carers' rights. In some cases, such as for instance the right to paternity leave, carers' right to take up time off or leave to assist a seriously disabled person, or the right to priority in the access to smart working or in switching from full-time to part-time employment, the new sanction fills a gap, strengthening the effectiveness of these provisions.

5.12.5 Protection from dismissal and burden of proof (Article 12 WLB Directive)

As regards parental and paternity leave: 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 or paternity 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. In general, 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 is also provided as a remedy in the event of established direct or indirect discrimination. Administrative sanctions are provided for the protection of motherhood and fatherhood. Another amendment to Decree No. 151/2001 made by Decree No. 105/2022 widens the application of administrative sanctions from EUR 516 to EUR 2 582 to all cases of infringement of different rights, including the right to take up two hours a day off work and to parental leave for seriously disabled children.

As regards care leave under Article 47 to 52 of Decree No. 151/2001 (time off from work when a child younger than three becomes ill), the protection against discrimination mentioned above can be applied; moreover, refusal, opposition, or obstacle to the exercise of the rights to these periods of leave are punished with an administrative sanction.

As regards care leave under Article 42 Paragraph 5 of Decree No. 151/2001 (workers who take care of a severely disabled cohabiting spouse/relative who is not hospitalised), refusal, opposition, or obstacle to the exercise of the rights to these periods of leave are punished with an administrative sanction.

As for the other types of care leave, care for *force majeure* and FWA, there are no sanctions provided in the event of infringement.

Decree No. 105/2022 has made some changes to the types of leave laid out in Law 104/1992 on disability-related care: a general ban on discrimination protects workers who benefit from different rights provided by this Law both as disabled persons and caregivers.

A special procedure provided by Article 28 of Decree 150/2011, which include an urgent procedure and the partial reversal of proof, becomes enforceable in these disputes, as well as the attempt of conciliation provided by Article 410 of the Civil Procedure Code. The partial reversal of the burden of proof provided by Article 40 of Decree No. 198/2006 in relation to discrimination as regards recruitment, professional training, career opportunities, remuneration, dismissals, and retirement is also applicable. Furthermore, 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 existing penalties are effective, proportionate, and dissuasive. There are in these cases enough measures at national level to ensure that penalties are implemented.

In the cases where penalties have not been provided, there is a lack of awareness of the legislature and an infringement of Directive 1158/2019.

Finally, Decree No. 105/2022 has provided other punitive measures in combination with the new gender equality certification system established by Law 162/2021. 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 81/2017, and Decree No. 81/2015 to ensure the conciliation of working and care duties, the gender equality certification cannot be awarded. In most cases this measure adds to the 'traditional' ones, such as administrative or penal sanctions that already punished the infringement against parents and carers' rights. In some cases, such as for instance the right to paternity leave, carers' right to take up time off or leave to assist a seriously disabled person, or the right to priority in the access to smart working or in switching from full-time to part-time employment, the new sanction fills a gap, strengthening the effectiveness of these provisions.

5.12.6 Case law

There is no relevant case law.

5.13 Evaluation of implementation

Decree No. 151/2001 on the protection of motherhood and fatherhood, which includes all rules on this subject, and also implements Directives 2006/54, 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 included in Decree No. 151/2001.

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

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

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

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 lays down the right of a woman on maternity leave to benefit, at the end of this period, from any improvement in working conditions to which she would have been entitled during her absence.

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

The maternity leave allowance is considerably higher than the sick leave benefit in both the private and public sector.
The Italian legislation also goes further than the EU directives in respect of conditions for eligibility, as maternity benefits do not require a minimum amount of national insurance contributions to have been paid.

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

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, 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, even 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;

- 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 strengthened: no sanctions are provided in the case of infringement against rights related to care leave, care leave for *force majeure* and 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 higher than EU requirements; its provision on a non-transferable basis: just two months out of six for each parent can be transferred; the fact that parental leave and the allowance paid during that period are not subject to any qualification periods; high-level provisions for parents of children with a disability or long-term illness; one-month long incentive for working fathers to take the leave; the application of the same sanctions system as that which applies to discrimination in relation to any threat to the enjoyment of parental leave and respective rights; and the 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 is much more favourable than required by the Directive.

- Decree No. 105/2022 introduced some measures which can be of help in the use of the various types of leave. Article 7 of Decree No. 105/2022 charges INPS (the National Institute for Social Security) to activate within 18 months from its issue specific digital services for information and access to leave and time off available for working caregivers. Information initiatives aimed at promoting the use of time off and leave for family care duties will be enhanced by the 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 will also ensure 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 mentioned above to be addressed to the Minister of Labour, to the Department for Family at the Prime Minister's Office and to Parliament. It is expected to ensure wide-ranging monitoring especially as regards the impact of the caregivers' rights on gender equality in the labour market and on the improvement of the sharing of care duties, as well as on the interaction between different types of leave, including leave for adoption and leave for family reasons granted to autonomous workers.

5.14 Remaining issues

Four years after it was first proposed, the Family Act on the reorganisation and improvement of different measures aimed at supporting families, and especially women, in achieving a healthy work-life balance was finally passed, as 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 3 of the Family Act delegates to the Government the task of issuing different decrees to reform the regulation of parental leave, maternity and paternity leave in order to strengthen and harmonise these decrees within two years after the delegating act enters into force. The 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 new 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 considering the specific needs of single parents as well.

- Parents will be entitled to five hours 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. At least two months of parental leave will be granted to each parent as non-transferable, including incentives for the leave to be equally distributed between the parents.

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

Other measures towards a better balance of care duties within the family relate to changes to the regulation of paternity leave. In particular, the duration of the 10 days of compulsory paternity leave to be taken in the first five months from the birth will be extended. It 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 private and public sectors, under the same conditions, assuring a reasonable notice period to 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, a new 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 leave, 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 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 delegation act, such as: incentives for employers who grant reversible flexible working conditions to working parents according to national collective agreements; facilitated tools for the regulation of housework services, babysitting and care activities for the elderly; a cut in taxes or contribution for employers aimed at facilitating the substitution of working mothers, their return to work or professional training.

A gradual adjustment of the remuneration for workers taking up 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 is an important first step in an ambitious project of strengthening and re-orienting policies to support families with children, sustaining both the cost of children and the reconciliation of family and work with a view to gender equality. Nevertheless, it still has some shortcomings, which have not been addressed during the long parliamentary procedure. For instance, no increase of 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.

Also, the increase in the duration of paternity leave is too uncertain to be assessed as regards its impact on changing the traditional distribution of roles within the family and no sanctions have been provided in the event 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 comparison with the previous proposal, envisages some new incentives to increase female participation in the labour market, we can confirm that one of the main deficiencies of the reform regards the fact that it does not abandon the traditional pattern. No emphasis is really 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 by Law 178/2020. Article 1, Paragraph 334 provided for 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. Paragraph 365 of Article 1 entitles unemployed or working women who are the only breadwinner in the family to an allowance of up to EUR 500 a month, in cases where they take care of a disabled child with a certified disability of a minimum of 60 %. For the next few years, there is 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.[67]

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

[67] 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.

to gender equality. Finally, actuarial factors that take sex into account might be detrimental for women, for example if their life expectancy, higher than that of men, is taken into account as this can reduce the monthly pension amount or increase their contributions.

6.8 Difficulties

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

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

7.1.2 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 197/2022 (Article 1, Paragraphs 283-284) makes it possible, as a temporary measure, to claim an early pension

[68] Law 243/2004, Law 247/2007, Law 102/2009, Law 214/2011.

at 62 years of age with 41 years of contributions (known as 'quota 103'). The option of taking an early pension provided by Law 197/2022, however, is not likely to favour women, but instead favours men. Indeed, this option favours those with a stable and long-term presence in the labour market and with higher pay levels, which are normally men as women usually have more fragmented careers and lower pay levels.[69] The same Law (Article 1, Paragraph 292) postpones, with important modifications, the operation of the 'women's option', according to which women aged 60 (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 2022, can benefit from an early pension if: they are caregivers of a seriously disabled relative; 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.

7.2 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, i.e. 1.5 times the social allowance for retirement aged 67 and 2.8 times the social allowance for retirement at the age of 64, in both cases with 20 years of contributions. Also, the earnings variations as well as the continuity and regularity of employment of the claimants appear once more to be of crucial importance, as the qualifying conditions for benefits and the pension amount are very sensitive to these factors. Furthermore, in invalidity pension schemes, the working contribution condition is one that is almost impossible for workers with recent spells of inactivity to fulfil. 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.

[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) in: http://www.ingenere.it/articoli/quota-cento-opzione-donna-politica-non-ci-vede.

voluntary contribution, redemption and notional contribution, are also quite weak in the Italian system; moreover, redemption and voluntary contribution are quite onerous.

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 197/2022 (Article 1, Paragraph 292), according to which women aged 60 (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 2022, can benefit from an early pension if: they are caregivers of a seriously disabled relative; 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.

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[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.

Cohabitants and partners are not included in survivors' schemes.

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 197/2022 (Article 1, Paragraph 292) postpones the operation of the 'women's option', according to which women aged 60 (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 2022, can benefit from an early pension if: they are caregivers of a seriously disabled relative; 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. 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.

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 197/2022 (Article 1, Paragraphs 283-284) 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 and its coverage is not subject to any limitations.

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

The 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 and includes a large number of very different categories, as well as self-employed persons who employ other persons.

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 and includes a large number of very different categories, as well as self-employed persons who employ other persons. The provisions in other pieces of legislation define self-employed persons (Article 2222 of the Civil Code) as 'persons who commit themselves to make a service or a work totally or mainly by means of their labour and without any subordination towards the customer' and small entrepreneurs (Article 2083 of the Civil Code) as 'small independent farmers, craftsmen, traders and those who professionally perform an activity which is organised mainly with their work and with the work of their family.' The law does not define quasi-subordinated work, that is, a sort of dependent self-employed worker (known as DSE).

As regards the protection of the working mother, Decree No. 151/2001 provides for a definition of a worker that refers to employees 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 (e.g. the partner whether formally married or not) habitually participate in the activities of the self-employed partner and perform the same or ancillary tasks, this relationship has to be considered as an employee relationship.

8.3 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 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 professional 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 three months of contributions in the year before the period covered by the allowance,

regardless of their decision as to whether or not to suspend their working activity.[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.
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 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 autonomous 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.

[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).

[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).

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, as an alternative to 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. 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 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. It also changed the regulations on parental leave by entitling parents to use this leave by the hour, according to criteria to be established by collective agreements. Following 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 a remunerated work relationship.

Finally, the Recast Directive has been implemented as regards occupational social security by Decree No. 5/2010, which has added Article 30*bis* to Decree No. 198/2006. However, it does not include any provisions on self-employment. Despite this, the domestic legislation, 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, professional 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).

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75 See e.g. Caracciolo di Torella, E. Directive 2004/113EC on Gender equality in goods and services – In search of the potential of a forgotten Directive (2021), European network of legal experts in gender equality and non-discrimination, available at: https://www.equalitylaw.eu/downloads/5614-directive-2004-113-ec-on-gender-equality-in-goods-and-services-in-search-of-the-potential-of-a-forgotten-directive-1-38-mb.

76 See: http://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 Prime Minister's Office, without any budget allocation. Article 55*novies* adds the promotion of studies, research, professional training and exchange of good practice, aimed at working out guidelines on fighting discrimination, to the other functions expressly provided for by the Directive as regards equality bodies. It also states that, for this purpose, the general division can partner with associations, organisations or other legal entities that have a legitimate interest in ensuring that the provisions of the Directive are complied with and that are entitled on this ground to engage, on behalf or in support of the claimant, with his or her approval, in any judicial and/or administrative procedure.

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

9.11 Remaining issues

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

10 Violence against women and domestic violence in relation to the Istanbul Convention[77]

10.1 General (legal) context

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

One of the objectives of the 'Extraordinary plan against violence' provided under Article 5 of Decree No. 93/2013 is to provide for annual data collection on cases of all forms of violence, including a map of specialist support services. The Decree also provides for coordination of the existing data collection (Paragraph 2 of Article 5). So far, data collection on all forms of violence has been made available by ISTAT, the National Institute for Statistics. The ISTAT datasets are available to the public.[78]

Law 53/2022, which was recently enacted, 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 new 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 new 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 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

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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.

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, the public utility number set up by the Department for Equal Opportunities at the Presidency of the Council; 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% the path of removal from situations of violence and 18 % 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 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

[79] See: https://www.istat.it/it/files/2021/11/EFFETTI_PANDEMIA_-VIOLENZA_D_GENERE.pdf.

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.[80] 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.

[80] 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,[81] 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.[82]

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.

More recently, Article 1, Paragraphs 149, 150 and 661-664 of Law 234/2021 slightly modified Decree No. 93/2013 and increased the Fund for Equal Opportunities, for 2022, with the aim of combating gender-based and domestic violence. 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.

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[81] See: https://www.interno.gov.it/it/stampa-e-comunicazione/dati-e-statistiche/omicidi-volontari-e-violenza-genere.

[82] See: https://www.inail.it/cs/internet/docs/alg-dati-inail-2020-ottobre-pdf.pdf.

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 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.

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.

10.1.3 National provisions on online violence including online harassment

There are not yet specific provisions on online violence and online harassment of women and girls, despite the fact that the phenomenon is quite common in Italy. Indeed, the Parliamentary Commission set up in 2017 to investigate the scale and causes of feminicide and violence against women recommended the adoption of a specific law on the issue.[83] 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 professional training on these issues is provided for police forces.[84]

10.1.4 Political and societal debate

The problem of violence against women and domestic violence is strongly recognised in Italy and the issue is present across the media.

In particular, a Parliamentary Commission 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, professional training of police, social services and physicians, guidelines to the media on how to report on gender violence; the adoption of specific norms on online violence and online harassment; and the improvement of psychological assistance for male perpetrators of violence. 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 professional training for the operators of the judicial system.[85]

[83] See: http://www.senato.it/documenti/repository/commissioni/femminicidio/DocXXII-bis_9.pdf.
[84] See: https://www.altalex.com/documents/leggi/2019/07/26/codice-rosso.
[85] See: https://www.senato.it/service/PDF/PDFServer/BGT/1300287.pdf.

Moreover, very recently, 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 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.

10.2 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.

[86] See: https://www.direcontrolaviolenza.it/violenza-covid19-2867-donne-si-sono-rivolte-ai-centri-antiviolenza-d-i-re-durante-il-lockdown/.

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 condition of the worker who brings a case to court for harassment or sexual harassment are null and void. The sole exception to the enforcement of this protection is in 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.[87]

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)[88] 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.

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[87] 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.

[88] 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 training for management, 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 will be filed online on the website of the Ministry of Labour and regional equality advisers 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).

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 of 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;[89] 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 new gender equality certification system established by Law No. 162/2021.[90] 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. N. 81/2017, and Decree No. 81/2015 to ensure the conciliation of working and care 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

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

[90] Law 162 of 5 November 2021 amending the Equal Opportunities Code, 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.

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 seriously disabled person, or the right to priority in access to smart working or in switching from full-time to part-time work, the new 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 assistance, social integration and rights of disabled people: 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 disabled persons 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),[91] 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[92] is a member of the EONC and coordinates the Conference of Equality Advisers,[93] 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

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

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

93 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.

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 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, professional 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 we do not have good case law on gender issues.

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

On the whole, the partial reversal of the burden of proof provided by Decree No. 198/2006 can be deemed to be a satisfactory implementation of Directive 2006/54/EC. As regards the use of quantitative/statistical data, the Equal Opportunities Code goes further than EU law as it requires companies with more than 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, professional training, career opportunities, remuneration, dismissals and retirement.

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

Finally, the legislation on the role of equality bodies and social partners also complies with the EU law. However, equality bodies have problems in relation to financing, which Decree No. 151/2015 did not solve: it amended Article 18 of Decree No. 198/2006, which regulates the fund for the activity of equality advisers, with the result that the situation on the financing of the remuneration/allowance for local equality advisers is not as clear as before. Furthermore, Article 18 does not make any mention of expenses for the activities of local equality advisers, including trial expenses, which local 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 99 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 99 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 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 station 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 transposition problems were 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 (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 new regulations aimed at achieving gender equality in politics and in hiring procedures in public administration.

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

As regards the justification clauses, the definition of indirect discrimination, for example, is stricter than EU law: in fact, neutral criteria which result in a disparate impact are only legitimate if they are essential requirements for the job. Furthermore, in relation to the use of quantitative/statistical data, Decree No. 198/2006 goes further than EU law, as Article 46 requires companies with more than 50 employees to draw up reports every two years on the situation of workers (male and female) as regards recruitment, professional training, career opportunities, mobility between categories and grades, other mobility aspects, remuneration, dismissals and retirement. 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 sexual orientation and 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. We have, however, Article 46 of the Equal Opportunities Code on the release of information on pay to individuals and other data at firm level.

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

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

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

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

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

The exception on the protection of women as regards pregnancy and maternity (Article 28 of the Recast Directive) has not been expressly provided. Nevertheless, Decree No. 198/2006 (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 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.[94] 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, professional training of police, social services and physicians, guidelines to the media on how to report on gender violence; the adoption of specific norms on online violence and online harassment; and the improvement of psychological assistance for male perpetrators of violence.

Law 69/2019, known as 'the Red Code', on the improvement of criminal law and the redress and protection of victims of violence has been approved.[95]
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, professional 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.

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

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

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