



2017/2273(INI)

12.4.2018

OPINION

of the Committee on Women's Rights and Gender Equality

for the Committee on Legal Affairs

on monitoring the application of EU law 2016
(2017/2273(INI))

Rapporteur: Marijana Petir

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SUGGESTIONS

The Committee on Women's Rights and Gender Equality calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

- having regard to Directive 79/7/EEC of 19 December 1978 obliging Member States to progressively implement the principle of equal treatment for men and women in matters of social security,
 - having regard to Directive 92/85/EEC of 19 October 1992 introducing measures to improve the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding,
 - having regard to Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between women and men in the access to and supply of goods and services,
 - having regard to Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC,
 - having regard to Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC,
 - having regard to Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims,
 - having regard to Directive 2011/99/EU of 13 December 2011 establishing the European Protection Order with the aim of protecting a person 'against a criminal act by another person which may endanger [his or her] life, physical or psychological integrity, dignity, personal liberty or sexual integrity' and enabling a competent authority in another Member State to continue the protection of the person in the territory of that other Member State; this directive is reinforced by Regulation (EU) No 606/2013 of 12 June 2013 on mutual recognition of protection measures in civil matters, which ensures that civil protection measures are recognised everywhere in the EU,
 - having regard to Directive 2012/29/EU of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA,
- A. whereas according to Article 2 of the Treaty on European Union (TEU) the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities; whereas values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail; whereas Article 8 of the Treaty on the Functioning of the European Union (TFEU) gives the Union the task of eliminating inequalities and promoting

equality between men and women through all its activities;

- B. whereas, according to Article 2 of the TEU and Article 21 of the Charter of Fundamental Rights of the European Union, equality between women and men is one of the core values on which the EU is founded, and whereas, in all its activities, the Union shall aim to combat all forms of discrimination, eliminate inequalities and promote equal opportunities and equal treatment;
- C. whereas Article 157 of the TFEU allows, and its Article 19 enables, legislation to combat all forms of discrimination, including on the basis of gender;
- D. whereas the EU and its Member States have committed themselves, in Declaration No 19 annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, ‘to combat all kinds of domestic violence ... , to prevent and punish these criminal acts and to support and protect the victims’;
- E. whereas EU legislation against trafficking in human beings, in particular women and children, has been adopted on the basis of Articles 79 and 83 of the TFEU; whereas the Rights, Equality and Citizenship programme finances, among other things, measures contributing to the eradication of violence against women;
- F. whereas the EU directives focused on gender equality in particular are not being implemented properly in a number of Member States, leaving people of different genders unprotected against discrimination in the areas of access to employment and to goods and services;
- G. whereas gender-based discrimination intersects with other types of discrimination, including discrimination on grounds of race and ethnicity, religion, disability, health, gender identity, sexual orientation, age and/or socio-economic condition;
- H. whereas 33 % of women in the EU have experienced physical and/or sexual violence and 55 % have been sexually harassed, 32 % in the workplace; whereas women are particularly vulnerable to sexual, physical and online violence, cyber bullying and stalking; whereas more than half of female murder victims are killed by a partner or relative; whereas violence against women is one of the world’s most widespread human rights violations, regardless of age, nationality, religion, education or financial and social status, representing a major hindrance to equality between women and men; whereas the phenomenon of femicide is not decreasing in Member States;
- I. whereas the EU LGBT survey found that lesbian, bisexual and transgender women face a huge risk of discrimination on the basis of their sexual orientation or gender identity; whereas 23 % of lesbians and 35 % of transgender persons have been physically/sexually attacked or threatened with violence at home or elsewhere (in the street, on public transport, at the workplace, etc) at least once in the last five years;
- J. whereas the application and enforcement of EU gender equality law in the Member States has been found to entail specific problems related to the transposition and application of the relevant directives, such as substantive deficiencies in legislation and its inconsistent application by national courts;

- K. whereas institutions and mechanisms for gender equality are often marginalised in national governmental structures, being divided between different policy areas and hampered by complex mandates as well as lacking adequate staff, training and data and sufficient resources, and experiencing insufficient support from political leaders;
- L. whereas according to the comparative analysis of non-discrimination law in Europe published in 2017 by the European network of legal experts in gender equality and non-discrimination, in the vast majority of countries serious concerns still persist around perception and awareness, as individuals are often not informed of their rights to protection against discrimination or of the existence of protection mechanisms; whereas, according to this analysis, with regard to the enforcement of the EU anti-discrimination directives further issues of concern have arisen, such as the lack of (or too restrictive) legal standing of organisations and associations as regards engaging in proceedings on behalf or in support of victims of discrimination and restrictive application of the shift of the burden of proof, as well as a number of barriers to effective access to justice, and these are acting as obstacles to citizens being able to fully enjoy and protect their rights deriving from the provisions of anti-discrimination law;
- M. whereas the Gender Equality Index 2017 of the European Institute for Gender Equality (EIGE) shows only marginal improvements, making it clear that the EU remains far from achieving gender equality, with the overall score now being 66.2 out of 100, just four points higher than ten years ago;
- N. whereas as regards the sphere of decision-making the above-mentioned gender equality data show an improvement of almost 10 points over the past decade, with the score now standing at 48.5, but this area still has the lowest attainment score of all; whereas this adverse figure primarily reflects the uneven representation of women and men in politics and points to a democratic deficit in EU governance;
- O. whereas the Eurofound report on the gender employment gap estimates that this gap is costing the EU around EUR 370 billion per year, corresponding to 2.8 % of EU GDP;
- P. whereas according to Eurofound's Working Conditions Survey, the composite indicator of paid and unpaid working time shows that when paid and unpaid working hours are computed women work longer hours;
- Q. whereas, despite the EU's commitment to gender equality in decision-making, the management boards of the EU agencies are seriously lacking in gender balance, and show persisting patterns of gender segregation;
- R. whereas the feminisation of poverty is a fact in the EU, and whereas the proper and full application and enforcement of EU equality and gender equality laws should go hand in hand with policies targeting the very high rates of unemployment, poverty and social exclusion among women, phenomena that are closely linked to budget cuts affecting public services in areas such as healthcare, education, social services and welfare benefits; whereas the lack of equality policies and of implementation of gender and equality law further endangers women and increases the risk of poverty and social marginalisation by excluding them from the labour market;
- S. whereas proper implementation of the existing legislation is essential for advancing

equality between women and men; whereas even though the Recast Directive 2006/54/EC clearly prohibits both direct and indirect discrimination, and despite the fact that women attain on average a high level of education, the gender pay gap still stood at 16.3 % in 2015;

- T. whereas the principle of gender equality needs to be an essential part in the monitoring of the application of existing EU legislation;
- U. whereas the collection of data, if possible disaggregated by gender, is substantially important for evaluating the progress made so far in the application of EU law;
1. Highlights that equality between women and men is a core principle of the EU which needs to be mainstreamed in all policies;
 2. Underlines the fundamental role the rule of law has in terms of the legitimacy of any form of democratic governance; highlights that this is a cornerstone of the Union legal order and as such is consistent with the concept of a Union based on the rule of law;
 3. Recalls that the principle of equality - in terms of equal pay for equal work - has been enshrined in the European Treaties since 1957 (see Article 157 of the TFEU), and highlights that Article 153 of the TFEU allows the EU to act in the wider area of equal opportunities and equal treatment in matters of employment and occupation;
 4. Points out that the proper implementation and application of EU law is essential for delivering EU policy in terms of the principle of equality between women and men as enshrined in the treaties and for encouraging and fostering mutual trust between public institutions both at EU and national level as well as between institutions and citizens, recalling also that trust and legal certainty both serve as a basis for good cooperation and the effective application of EU law;
 5. Reiterates the Commission's role as 'guardian of the Treaties' and its duty to monitor the application of EU law, and underlines that the Member States have the primary responsibility of ensuring its implementation and enforcement; points out that non-implementation, incorrect application and lack of enforcement of the existing EU legislation in the area of equality between women and men affect the efficiency and credibility of the Union;
 6. Reminds the Member States and the EU institutions that ensuring timely and proper application of the legislation in the Member States remains a priority for the EU; stresses the importance of upholding the principles of conferral, subsidiarity and proportionality, pursuant to Article 5 of the TEU, as well as equality before the law with a view to better monitoring of the application of EU law; recalls the importance of raising awareness of the provisions of the existing directives tackling various aspects of the principle of equality between women and men and of delivering on it in practice;
 7. Calls on the Member States to increase their efforts for the timely transposition and implementation of the law, thus implementing equality between women and men in practice;
 8. Underlines that failure to ensure timely and correct transposition of the existing EU

legislation addressing the principles of equal opportunities for and equal treatment of men and women in matters of education, employment and occupation, equal pay for equal work, and equal treatment of women and men in access to and supply of goods and services, as well as the existing provisions to improve work-life balance and to end all forms of violence against women and girls, ultimately deprives citizens and businesses of the benefits to which they are entitled under EU law;

9. Underlines the impact that the effective application of EU law has on strengthening the credibility of the European institutions; considers, therefore, that the annual report published by the Commission, the right to petition and the European Citizens' Initiative are important tools enabling the EU legislators to identify possible loopholes;
10. Recognises the importance of collecting data, if possible disaggregated by gender, for evaluating the progress made in advancing women's rights;
11. Stresses that infringement procedures are a valuable tool for ensuring the correct implementation of EU law;
12. Reiterates that with the entry into force of the Lisbon Treaty the Charter of Fundamental Rights of the European Union has become a binding set of EU fundamental rights and that the Charter prohibits discrimination on any ground, without limiting this prohibition to any specific fields, and is addressed to the EU institutions, bodies, offices and agencies and to the Member States when they are implementing Union law;
13. Calls on the Member States to tackle the rise in trafficking in human beings for the purpose of labour exploitation, and in trafficking for the purpose of sexual exploitation, which is still the most widespread form of human trafficking;
14. Notes with appreciation with regard to the Court of Justice of the European Union that its broad interpretation of the concept of equal pay for equal work as articulated by the Court and its extensive case law on the relevant article have certainly broadened the possibilities of combating both direct and indirect gender discrimination as regards pay and narrowing the gender pay gap, but stresses that more remains to be done to eliminate the persisting gender pay gap in the EU;
15. Regrets the failure to adopt and implement EU legislation which would properly tackle working conditions and working hours, including work on public holidays and Sundays and work without breaks and rest periods; points out that this lack of uniform law is an obstacle to achieving a proper work-life balance and that this particularly affects women and their position in the labour market;
16. Is deeply saddened that the introduction of legal principles outlawing inequality in pay between men and women has not proved sufficient on its own to eradicate the persisting gender pay gap; stresses that the Recast Directive requires that the Member States ensure that all provisions of collective agreements, wage scales, wage agreements and individual employment contracts which are contrary to the principle of equal pay shall be or may be declared null and void or may be amended;
17. Underlines that, going beyond the existing tools for the implementation of EU law, further attention should be paid by both the Member States and the Commission to

alternative instruments that would enable the wider implementation of EU law, especially the provisions concerning equality in terms of payment; highlights, therefore, the importance of achieving collective agreements for securing equal pay, parental leave and other related employment rights through collective bargaining;

18. Recalls its resolution of 15 January 2013 calling for the adoption of an EU regulation on a European law of administrative procedure under Article 298 of the TFEU¹; notes with disappointment that the Commission has failed to follow up Parliament's call for it to submit a proposal for a legislative act in respect of the law of administrative procedure.

¹ OJ C 440, 30.12.2015, p. 17.

INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

Date adopted	12.4.2018
Result of final vote	+: 17 -: 1 0: 5
Members present for the final vote	Daniela Aiuto, Beatriz Becerra Basterrechea, Vilija Blinkevičiūtė, Anna Maria Corazza Bildt, Iratxe García Pérez, Anna Hedh, Teresa Jiménez-Becerril Barrio, Florent Marcellesi, Angelika Mlinar, Marijana Petir, João Pimenta Lopes, Ángela Vallina, Elissavet Vozemberg-Vrionidi, Jadwiga Wiśniewska
Substitutes present for the final vote	Livia Járóka, Urszula Krupa, Kostadinka Kuneva, Nosheena Mobarik, Jordi Solé, Marc Tarabella, Mylène Troszczynski, Julie Ward
Substitutes under Rule 200(2) present for the final vote	Margrete Auken

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

17	+
ALDE	Beatriz Becerra Basterrechea, Angelika Mlinar
ECR	Nosheena Mobarik
EFDD	Daniela Aiuto
GUE/NGL	Kostadinka Kuneva, Ángela Vallina
PPE	Anna Maria Corazza Bildt, Marijana Petir, Elissavet Vozemberg-Vrionidi
S&D	Vilija Blinkevičiūtė, Iratxe García Pérez, Anna Hedh, Julie Ward, Marc Tarabella
VERTS/ALE	Margrete Auken, Florent Marcellesi, Jordi Solé

1	-
ENF	Mylène Troszczynski

5	0
ECR	Urszula Krupa, Jadwiga Wiśniewska
GUE/NGL	João Pimenta Lopes
PPE	Teresa Jiménez-Becerril Barrio, Livia Járóka

Key to symbols:

+ : in favour

- : against

0 : abstention