

# Introduction on the state of play

This is the sixth issue of the biannual European equality law review, produced by the European network of legal experts in gender equality and non-discrimination (EELN). This issue provides an overview of legal and policy developments across Europe, and as far as possible reflects the state of affairs from 1 January to 30 June 2017. The aim of the EELN is to provide the European Commission and the general public with independent information regarding gender equality and non-discrimination law, and more specifically the transposition and implementation of the EU equality and non-discrimination directives.

## In this issue

This law review contains a section relating to the most recent case law of the Court of Justice of the European Union and of the European Court of Human Rights, and a section detailing the most recent developments in legislation, case law and policy on the national level.<sup>1</sup> It also contains four in-depth analytical articles. In the field of non-discrimination law, Melanie Hack of the Max Planck Institute for Social Law and Social Policy contributes an article which presents and analyses mandatory retirement age(s) in Germany from the perspective of the prohibition of age discrimination. Also in the field of non-discrimination, Katayoun Alidadi of the KU Leuven, University of Houston and the Max Planck Institute for Social Anthropology writes about the collection of equality data in the EU by analysing the legal frameworks, practices and key issues arising in all EU Member States. In the field of gender equality Marlies Vegter, the gender expert for the Netherlands, takes a look at the support that is provided at the EU and the national level to self-employed workers in the EU to create a better work-life balance. Finally, an overarching perspective is provided through an article authored by Catharina Germaine from the Migration Policy Group on the scope for non-discrimination and equality related considerations in the EU legal framework on public procurement.

## Recent developments at the European Level<sup>2</sup>

On 26 April 2017, the European Commission launched the *European Pillar of Social Rights. Building a more inclusive and fairer European Union* and published a Communication on the European Pillar of Social Rights, as well as a Recommendation.<sup>3</sup> The Recommendation in particular addresses equal opportunities and access to the labour market in the first chapter. The Commission specifies in a section on gender equality that ‘equality of treatment and opportunities between women and men must be ensured and fostered in all areas, including regarding participation in the labour market, terms and conditions of employment and career progression’ and that ‘women and men have the right to equal pay for work of equal value’. In addition, in a section on equal opportunities the Commission emphasises that ‘regardless of gender, racial or ethnic origin, religion or belief, disability, age or sexual orientation, everyone has the right to equal treatment and opportunities regarding employment, social protection, education, and access to goods and services available to the public’ and the Commission recommends that ‘equal opportunities of under-represented groups shall be fostered’. The second chapter *Fair working conditions* includes a section on work-life balance which emphasises that ‘parents and people with caring responsibilities have the right to suitable leave, flexible working arrangements and access to care services. Women and men

- 1 On the basis of information provided by the national experts, Franka van Hoof from Utrecht University drafted the sections regarding gender equality while Catharina Germaine from the Migration Policy Group drafted those regarding anti-discrimination and made the final compilation.
- 2 This section, as the rest of the Review, covers the period of 1 January to 30 June 2017.
- 3 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Establishing a European Pillar of Social Rights: COM (2017) 250 final and Commission Recommendation of 26.4.2017 on the European Pillar of Social Rights.

shall have equal access to special leaves of absence in order to fulfil their caring responsibilities and be encouraged to use them in a balanced way'. Finally, another section concerns the inclusion of people with disabilities and covers services as well as the labour market.

The same day, the Commission published a proposal for a Directive on work-life balance for parents and carers.<sup>4</sup> The aim of the proposed Directive is to 'achieve equality between men and women with regard to labour market opportunities and treatment at work through facilitating the reconciliation of work and family life for working parents and carers' (Article 1). The proposal – if adopted – would provide for individual rights of workers who have an employment contract or employment relationship to paid paternity leave, parental leave and carers' leave. Parental Leave Directive 2010/18/EU would be repealed.

In addition, a right to request flexible working arrangements for caring purposes would be introduced for workers with children up to a given age (at least twelve) and carers. Employers would have the obligation to consider and respond to such requests and to justify a refusal.

In February, the issue of equality data was particularly relevant,<sup>5</sup> with a European Parliament report being published on 'fundamental rights implications of big data: privacy, data protection, non-discrimination, security and law enforcement',<sup>6</sup> as well as a revised and updated version of the European handbook on equality data.<sup>7</sup> In addition to a thorough examination of the legal frameworks and practices in relation to equality data collection, the revised Handbook contains a number of recommendations directed at different levels of stakeholders and decision makers, both on European and on national level.

On 13 June 2017, the EU became a signatory party to the Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention), which had already been signed by all EU Member States. The signature of the EU will contribute to the harmonization of legislation and policies at the national level and EU level, although accession now requires the adoption of the decisions on the conclusion of the Convention. These decisions will need the consent of the Parliament. Combatting all forms of violence against women is one of the European Commission's priorities for 2017, as is also shown by this year's awareness-raising campaign using the hashtag #SayNoStopVAW on social media.

The European Parliament's Committee on Women's Rights and Gender Equality adopted a report in February on EU funds for gender equality. Members noted that budgets on promotion of gender equality were mostly spent in soft-policy areas and called for better internalisation of the principle of gender equality and mainstreaming in the budget allocation and spending of all EU policy areas.<sup>8</sup>

Finally, a number of relevant reports were published during this reporting period, including FRA's Fundamental Rights Report 2017 published in May which noted a generalised lack of a fundamental rights culture across institutions and societies, creating new challenges.<sup>9</sup> The European Commission also

4 Directive of the European Parliament and of the Council on work-life balance for parents and carers and repealing Council Directive 2010/18/EU, COM (2017) 253 final.

5 For a thematic article on the issue of equality data collection authored by Katayoun Alidadi, see below, pp. 15-27.

6 European Parliament report of 20 February 2017 on fundamental rights implications of big data: privacy, data protection, non-discrimination, security and law enforcement (2016/2225(INI)), available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A8-2017-0044+0+DOC+XML+V0//EN>.

7 Makkonen, T., European handbook on equality data – 2016 revision, EU Commission DG Justice and Consumers, Brussels, February 2017, available at: [http://ec.europa.eu/newsroom/just/document.cfm?action=display&doc\\_id=43205](http://ec.europa.eu/newsroom/just/document.cfm?action=display&doc_id=43205).

8 European Parliament Committee on Women's Rights and Gender Equality Report on EU funds for gender equality (2016/2144(INI)), Brussels, February 2017, available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A8-2017-0033+0+DOC+PDF+V0//EN>.

9 Bridging the gap between policies and reality: FRA's Fundamental Rights Report 2017, Vienna, May 2017, available at: <http://fra.europa.eu/en/press-release/2017/bridging-gap-between-policies-and-reality-fras-fundamental-rights-report-2017>.

published its First Annual Report on the implementation of the List of Actions to advance LGBTI Equality, noting which priorities and issues the Commission is working on for each of the six areas of actions.<sup>10</sup>

## Network publications and activities

With regard to gender equality, the Network has prepared a number of reports. A thematic Report on pay transparency, authored by Albertine Veldman has recently been published.<sup>11</sup> This report provides a legal analysis of the measures that are in place regarding pay transparency at the national level. The Network has also published a thematic report, authored by Petra Foubert, on the enforcement of the equal pay principle, including issues of compensation, reparation and sanctioning and the role of equality bodies. With regard to non-discrimination, two thematic reports are being finalised for publication. The first one is authored by Isabelle Chopin, Catharina Germaine and Judit Tanczos of Migration Policy Group and provides an analysis of the current state of enforcement of anti-discrimination rights specifically for Roma. The second thematic report related to non-discrimination is authored by Erica Howard and provides an in-depth analysis of the legal issues surrounding religious clothing and symbols in employment, following the recent landmark decisions delivered on 14 March 2017 by the CJEU in the *Achbita* and *Bougnououi* cases.<sup>12</sup>

As always, please check the Network's website – <http://www.equalitylaw.eu/> – for the full text of all reports.

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10 Annual Report 2016 on the List of Actions to advance LGBTI Equality, EU Commission DG Justice and Consumers, Brussels, February 2017, available at: [http://ec.europa.eu/newsroom/just/item-detail.cfm?item\\_id=54346](http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=54346).

11 Veldman, A. (2017), Pay transparency in the EU, European Commission, available at <http://www.equalitylaw.eu/downloads/4073-pay-transparency-in-the-eu-pdf-693-kb>.

12 These decisions are summarised below, on pages 58 and 59 respectively.