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Editorial

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The Treaty of Rome signed on 25 March 1957 establishing the European Economic Community (EEC) was by and large a treaty focusing on economic topics, with the notable exception of Article 119: ‘Each Member State shall ensure during the first stage and thereafter maintain the application of the principle of equal pay for male and female workers for equal work’. The goal of this Article was not just the protection of female workers all over the territory of the EEC, but also the protection of the labour market of France, which already had rules on equal pay treatment, against Member States that didn’t. These latter States could have a competitive advantage over France. Article 119 EEC was therefore a means for preventing social dumping. But this does not mean that Article 119 EEC wasn’t taken seriously. On the contrary. It, in fact, facilitated important changes in the world of equal payment in employment relations. The ECJ held in the landmark case 43/75 *Defrenne – v – Sabena* that the aforementioned ‘double aim’ of Article 119 EEC, ‘which is at once economic and social’, shows that ‘the principle of equal pay forms part of the foundations of the Community’. The consequences were far-reaching: Article 119 EEC had direct effect, also in horizontal situations:

The principle that men and women should receive equal pay, which is laid down by Article 119, may be relied on before national courts. These courts have a duty to ensure the protection of the rights which that provision vests in individuals, in particular in the case of those forms of discrimination which have their origin in legislative provisions or collective labour agreements, as well as where men and women receive unequal pay for equal work which is carried out in the same establishment or service, whether private or public.

Obviously, there is also ample secondary EU law in the field of equal treatment. Equal treatment is furthermore safeguarded in Article 21 of the Charter of Fundamental Rights of the European Union.

One may think that, given the lengthy history of and the ample attention given to equal treatment within the EU with regard to equal pay for male and female workers, everything should have been sorted by now. This would, however, be a mistake. There is a significant gender pay gap in Europe. On average, that pay gap is 12.7% within the EU, with peaks up to a staggering 20.5% within Member States.

How to improve gender equality and narrow the pay gap? One of the supposed obstacles to secure equal payment is the lack of pay transparency. This obstacle should be removed by the Pay Transparency Directive, which has been adopted on 30 March 2023 by the European Parliament. Basically, this Directive requires EU companies from a certain size to disclose information that makes it easier for employees to compare salaries and to expose existing gender pay gaps. Once the Council will approve, this Directive can be executed and published in the Official Journal.

Equal treatment therefore remains work in progress. This can be seen in this Issue as well: several of the cases concern equal treatment: gender discrimination resulting from the use of an internet portal in Germany, a breach of equal treatment on grounds of sex and gender identity in Poland and a neutrality policy concerning functions in contact with the public in Belgium. Besides equal treatment, EU law covers much more areas of employment law. In this Issue you can also read all about the Academic Board’s view on the most important EU developments in 2022. You can furthermore read about transfer of undertaking, stand-by time, private international law and much more.

Enjoy!