

EU Gender Equality Law: developments, challenges and ideas for the future

**Keynote Speaker: Alexandra Timmer,
Utrecht University, Holland**

So, good evening, and welcome to the first day in the series of seminars organized as part of the project We Frame. Collective views for equality. The project started last April, thanks to the support of the European Union, and is coordinated by the University of Gerara. Under the direction of Professor Ossetiolo. Prices and Dreams from Sweden of Ficcino, and TDS, Centro Vicher que documentazioni, Estudio economicosochalli, from Italy. And the other three partners of the project. WeFrame builds on the European integration process by addressing the complexities of identity and equal rights from a gender perspective. The idea is to explore and promote a better understanding of gender equality and women's rights through both intergenerational and intersectional perspectives. By combining research, creative workshops, and cultural events, the project looked at the history challenges and future of equality with the goal of inspiring concrete action toward a more inclusive society.

And today marks the beginning of our series of four online seminars. In this first session, we had the great pleasure and honor of welcoming Professor Alexandra Timmer, where we'll introduce properly in just a moment. Hadbook today will focus on European gender equality law. And the following seminars, led by scholars who are true reference points for gender studies in Europe and beyond, will explore topics such as the relationship between gender and care, the situation of intersex and non-binary people, and finally, the analysis of gender equality in European Union policies. If you don't have filled out the registration form, you can still do so to receive the link for each

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session directly without having to look it, uh, every time. And also to help us in carrying out the project. And we have also a project website, and you can find all the information. But, uh, today we... we are also pleased that we have with us a lawyer Gloria Cogi, representing the Equal Opportunities Committee of the Ferrara Bar Association, with women, we have long collaborated on this very issue. I give her the floor for the institutional greetings, and thank you, Gloria, for your presence today.

Thank you, thank you so much. Good evening to all the participants. First of all, I apologize for my English. Uh, it is a great pleasure to be present at this meeting. I am Gloria Poggy of Vocata, and a member of the Comitato Pario Pre Solorina della Vocatre Ferrara. Greetings also from the President of Ocata Territtireali and all the committee members. Today's topic is very interesting, as it represents a still under-discussed perspective. Knowing and understanding European legislation on gender equality, and understanding the cultural and legislative differences between member countries in this regard. Thank you so much to the WeFrame Project. And the organization that are supporting it for this brilliant initiative. I will listen with great interest. Thank you so much.

Thank you, uh, Gloria, for your presence and, uh, your, uh, support, value-based support. And now, let's move on to the core of today's event, and we are truly delighted and grateful to have Professor Timer with us today, despite her many commitments. Her curriculum vitae is very rich and impressive, and so I will just mention a few highlights, and I hope she will forgive me for the brevity of the presentation. Professor Timer is Associate Professor of Human Rights Law at the Netherlands Institute of Human Rights. Her research focuses on equality and non-discrimination in European Union law, the European Convention on Human Rights, International Human Rights Treaties, and Dutch Law, with a particular interest in the relationship between gender and law. In 2017, she was awarded a prestigious Benny Grant by the Duchess Scientific Organization for her research project, uh, which is called Gender Injustice, Historical Development and Contemporary Challenges in European human rights law. She's also co-director of the Utrecht Center for Regulation and Enforcement in Europe, and a member of the Dutch State Commission against the Discrimination and Racism. I add

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another important point, she's also a little bit Italian, and even a little bit Ferrese, because she studied in Italy. And the last spring, she was appointed Visiting John Formadio Chair at the University of Ferrara, and it was truly, uh, truly an honored and a pleasure to host her and to work with her. The title of today's talk is European Union General Equality Law: developments, challenges, and idea for the future. Alexander, thank you for being with us, and the floor is yours.

Thank you so much for this more than generous invitation, I can only hope that the next time it will be in person again in Ferrara, instead of online in dark and windy and rainy Netherlands, I ex... I apologize for the lack of light, I just moved house a few days ago, and we don't have enough lamps yet. So, that is why I'm sitting here in the semi-darkness. I hope you can... still see me. I'm going to share my screen now. Uh... I don't know. Yes, I think you can see it, right? Yeah.

Okay, so thank you, Orceta and Maria Giulia, as ever, uh, for our continued collaboration. My topic of today is actually... um... a bird's eye view, so a general overview of EU gender equality law: developments, challenges, and ideas for the future. Now, when I promised to deliver this lecture, I thought, oh, that is easy. And when I actually started to prepare it, I realized how difficult it is to try and attempt to give a bird's eye view of such a big area of law in just, you know, an hour, or a little bit more. I'll do my best. It's a very legal talk, right? Because my background... I'm a lawyer, the focus is really on the law aspect. I could also say a bit about enforcement, but as my core interest is more in the material norms, I will focus on the substantive norms themselves, rather than enforcement aspects. And I welcome discussion and questions at the end, so we will surely also have time for that. Okay, um... Let's see what it is works... yes, okay.

My talk consists of three parts. I will start with, uh, saying something about the historical development of this area of law, the EU gender equality law. Then I zoom in on the core concepts and their challenges, and the concepts, those concepts are, obviously, perhaps, gender equality, and discrimination. And then I will list some achievements and ideas for the future. Now, of course, this is a partial view, it's my view. But, uh, for what it's worth.

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Okay, let me begin with the historical development. It actually started in Italy, as many things did, uh, in the... with the 1957 Treaty of Rome, establishing the European Economic Communities. Um, I... I mean, there's a lot to say about this area... this history, but I'll just zoom in on three, sort of, key moments. The adoption of the Treaty of Rome, different cases from the 1970s, and I'll briefly say something about the Treaty of Amsterdam before we move on to the more, let's say, recent history.

So, it all began, actually, with one rather short provision in the 1957 Treaty of Rome concerning equal pay, and the provisions said that each member state shall ensure the application of the principal that men and women should receive equal pay for equal work. Now, um... The background to this article, so the reason why this article was included in the treaty, was not from some lofty fundamental rights aspirations. No, the background was more... uh... economic. So, this article... was included in order to facilitate the creation of an internal market within the... what was then still called the European communities. And the background was... Rivalry, really, between... France and Germany. I always forget which was which. I think France had stronger protections for their workers than Germany. Um, so, Franz, don't... you know, if I'm wrong, please excuse me, but in my memory, it was Franz that had, um, the... the equal pay principle already enshrined in their national law. And they were afraid that if this was not included in the Treaty of Rome, Germany would have an unfair competitive advantage over them, because they could have cheaper labor... female labor in Germany. And that's why this article was included. Um... But that is interesting, because from that provision grew the entire field of what is today known as not just EU gender equality law, but also EU non-discrimination law broader, and actually, EU fundamental rights law all started with this. Now, up to the 1970s, this provision was, uh... a bit of a sleeping duty. Yeah, I didn't have much... uh... bite yet. Uh, until, uh, a famous lawyer, perhaps you have heard of her, it's one of my legal heroines, Eliana Vogelpolsky, a Belgian labor lawyer, Grand Dame of, uh... of EU gender equality law, decided, Eliane Vogeopolsky decided to take action in order to ensure that this Article 119 would no longer be a paper tiger, but would be enforced in practice. And she took on the case of Gabrielle de France. Gabrielle de Frane is pictured in the middle here, who was an air hostess working at the airline called

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Sabena, it doesn't exist anymore, this airline, but these airline, Savannah, had a policy that air hostesses had to go with compulsory retirement at the age of 40. And Eliane Vogelposky decided to take this case to court first, in Belgium, and then make sure the Belgian courts asked judicial questions to the court in Luxembourg, the European Court of Justice, about whether this was... Um... this practice of retiring female air hostesses at the age of 40, whether that was contra Article 119. And this... what started in Belgium actually turned into a whole and very famous EU law saga. It turned into 3 cases, no less, or ate in the court of the Luxembourg Corps, the European Court of Justice. Um, and these judgments from the European Court of Justice weren't just crucial for the development of EU gender equality law, but they were actually key in the development of the whole field of EU law as such.

Uh, the first case is perhaps the least well-known. It concerns the definition of be under this Article 119. But different 2 and different 3 were absolutely crucial. So, in different 2, the court held that this article, which, as I explained to you, had a purely economic background, the court said, uh, well, the economic objective is not the only one. Actually, the court held that Article 119, here's the quote on the right of your screen, forms part of the social objectives of the community, which is not merely an economic union, but is intended by common action to ensure social progress and seek the constant improvement of the living and working conditions of the people. So, that was a significant broadening of... Eh? De... de raison d'etre, the... the statement of, okay, what is... what is the purpose? Not just, well, of this article in, um... In principle, but also more broader. And also, what the court said was that this article has direct effect, meaning that citizens around Europe could rely on this provision, 119, at their national courts, whether it was the Netherlands or Italy, uh... Because this, um... This article is directly effective in the Member States. Then in the third case, the court went on to say that the elimination of sex discrimination is actually a general principle of EU law.

I continue. I make a sort of 22-decade jump to the Treaty of Amsterdam, which introduced a number of constitutional guarantees of gender equality. So that was the moment where gender equality was really enshrined in the core Treaty of the European Union as such. For example, Article 2 of that treaty stated that to promote equality

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between men and women is one of the tasks of the Union. And, uh, with this treaty, basically, what happened was that EU gender equality law, as well as policy, became officially three-dimensional, consisting of anti-discrimination—so a prohibition of discrimination—positive action, and gender mainstreaming, which was also... the current article is article 8 of the current treaty of the function of the EU, what is now Article 8 was included back then in 1997. So, this treaty was key in the development of EU gender equality law, but it's also noteworthy for another reason, and that was the introduction of what we call an enabling provision. So, a provision that allows the EU to take action on not just sex discrimination, but also race or ethnic or discrimination based on race or ethnic origin, religion, or belief, disability, age, or sexual orientation. So, from there, EU non-discrimination law went from just the probation of sex discrimination, and by the way, also a prohibition of nationality discrimination, but that's a whole other area of law—which I'll leave out for the moment—and so, besides sex, these other different... these other grounds were introduced, right? Race, religion, belief, disability, age, and sexual orientation. And this created... this enabling provision created then the opportunity for the European Commission and the European Parliament to take further action and to adopt directives in the area of racial discrimination and also a framework equality directive on those other grounds. So... That really, sort of, EU non-discrimination law took off. And this year, actually, 2025, we have been celebrating the 25 years of existence of these non-discrimination directives that were actually, um, adopted in 2000.

Um, okay, again, I make a sort of two decades jump to more recent developments, because those were... Yeah, in the early 2000s, there was a flurry of, let's say, legislative activity, lots of directives were adopted. And then, on the legislative scene, it went a bit quiet for a few years. Until, in the past years, I mean, I've been working now on this topic for a little bit over a decade. And I've actually been trying to write a book on this topic, and every time I think, oh, the book is now almost finished, they adopt a new directive, and we... And my co-authors and I have to rewrite the book. So, in the past 6 years, 6 new directives were adopted in the area of gender equality, and I list them for you here. One is on work-life balance. Uh, then came one on gender-balanced company boards, on

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pay transparency. Which is, I mean, the prohibition of pay discrimination was already there since 1957, as I just explained to you, but directive... deepens that prohibition by actually creating enforcement more... more enforcement mechanisms. Two new, uh, two directives on equality bodies, and... also interesting, I think, for our present purposes today, the adoption of a directive on combating violence against women and domestic violence. Which, by the way, went hand in hand, um, more or less, with the EU accession to the Istanbul Convention. Perhaps you've heard of the Istanbul Convention, it's the Council of Europe convention, um... Uh, against, uh, combating also violence against women and domestic violence. So that is interesting, yeah, the EU exceeding to a human rights convention. It's not the first time that this happened. The EU has also acceded to the UN Disability Convention. But this is the second time that the EU exceeded to a human rights convention of another organization, in this case, the Council of Europe.

Um... So, sorry. Um... and... one thing I want to already flag here, which will be a recurring theme throughout my lecture, is that this overview already shows that there has been a significant broadening of EU gender equality law, right? It just began with this one provision on equal pay. And from there onwards, uh, it has sort of mushroomed this field to include, uh, sex discrimination in employment, provision of sex discrimination in goods and services—I haven't mentioned that already, it was one of those directives that was adopted in 2004—provision of sex discrimination in Social Security, uh, and now also... violence against women more recently. So the field has widened a lot throughout the years.

Um, okay, my next slide. Uh, with these sort of widening area of law, with these developments that have caused an expansion of the field, of course, also came challenges. Uh, I could mention many here, I had to really think, okay, what now are some core challenges in these historical developments? And I... well... I just... I want to highlight two. Um... first, uh, and for scholars of EU law, this is perhaps an obvious point, but for people who don't study EU law so much, and I used to be... my background is actually not in EU law. My PhD was on human rights law, so it took me a long while to sort of understand the system. And the system is, or the fact is, that the EU has only

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limited competence in the area of gender equality. So, most of EU gender equality law concerns employment, eh? Traditionally with equal pay and prohibition of sex discrimination in employment. Issues of work-life balance, and then you can think, for example, about protection of pregnancy, protection of maternity, uh... care leave, uh... fathers leave more recently. Um, as I mentioned, Social Security, goods and services, those are sort of the core issues of competence for the EU. Uh... and for example, the European Convention on Human Rights, in terms of substantive topics, is much wider on what it covers, right? So, EU... the EU has only limited competence in this area, and of course, the competence that it has, has been, sort of, conferred... what has been conferred on the EU by the Member States. And that is, of course, also always a political process of do the... what do the member states agree on? Uh, and whatnot. And you see that in the... those... in the text of those directives. They are political compromises. Okay, so that's point one.

Um, point two is, uh, yeah, I just gave you this picture of, okay, 6 new directives that have been adopted in the past 6 years. That is not even mentioning the older directives. It's also not mentioning even yet the treaties, policy documents, soft law documents, I mean, there is now a situation, I think, of fragmentation. And... even writing that book that I've been writing for all those years on EU gender equality law, it was difficult to say, okay, what are the sources, really, of EU gender equality law? Some sources are clear, but at some point, the boundaries become blurry, and um... Uh... And that doesn't make it easier for... for anyone, but not for the experts, but I certainly think also for people who don't work daily in this field, the fact that there are so many provisions and so many directives. It's difficult to keep the overview, and I think that also, for the member states, it makes it more difficult to implement EU law when there is so much fragmentation. Okay, so this was my part one of the, sort of, the historical development. I would now, uh, like to zoom in on some core concepts with you. Um... And I... could... I mean, we could make this very philosophical, which I would love to do. I'll try not to do. But I think a key question here is: what is the underlying normative aim of equality law in general? This doesn't just apply to EU law, but also to Italian law, Spanish law, Dutch law. But, so, what is the underlying normative aim? And there is no single answer to that. I think there

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are multiple aims. Uh, is it formal equality? Is it equality of opportunities? Is it equality of results? Is it perhaps transformative equality? Let me unpack these four, sort of, conceptions of equality a little bit. Formal equality refers to treating likes alike. Uh, treating likes alike. Apologies. Um... It is about treating people equally, sameness. I think... I think my daughter's coming. But I'm also afraid of enemies. Okay, I'm gonna... I'm gonna do the dirty. Now, it's for heating! Okay, look, I'm in... Okay, so, sorry, work-life balance in action. She comes to tell me that we're going to celebrate Halloween. I mean, maybe if you fake winning the race, you know how to do this. Okay, good. So, he escaped from the care of him. My husband, I think. Um, so formally, treating likes alike, the emphasis is on equal treatment, equal, uh, so it's equality a sameness, right? Equal opportunities, however, is already a more substantive concept. It's the emphasis is on the chances that should be offered equally, so it's this idea of leveling the playing field. Uh... Equality in results, which is what I would say is more real substantive equality, is one step further. It's not just equal chances, but actually equality in results, and which also necessitates a positive action towards actually achieving those results. Or is equality law perhaps aimed at transformative equality, addressing structural patterns of gender discrimination. Um, that is very much present, I think, in the UN Convention on the elimination of discrimination against women, CEDU.

Okay, that was a very short of... short-sight road into... Okay, different normative aims that you can see in equality law. Now, let's go back to EU law, specifically. Um, very broadly speaking, what I see in EU law is a combination of negative and positive obligations. Uh, negative obligations had the prohibition, uh, the prohibition to discriminate, concern equal pay, uh, cover employment relations, social benefits, social insurances related to paid work, negative obligations, so the prohibition to discriminate related to goods and services. But there are also positive obligations: actively promoting equality. These can consist of positive action. For example, now, uh, with the gender-banced company board directive is a very clear example of that, that positive action. But also protecting pregnancy and maternity, giving women... giving mothers rights to maternal, um... maternity leave, for example, and a work-life balance directive. Of course, there are no rigid boundaries between negative and positive obligations, and

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again, always remember, with EU gender equality law, the scope, the material scope is limited.

Okay, uh, so... Uh, the concept of gender in EU law. Um, I want to say a little bit about that. There... it's not defined, first off. EU gender equality law does not actually define gender. And second... the term sex and gender are used interchangeably, broadly speaking, and so in the treaties, um, in the case law, uh, quite often, you see references to equality between men and women, or sex discrimination. So there's no definition. I mean... there are different definitions of policy, but there is no legally binding definition of gender. Um... You know, took important steps, I think. So when we think about landmarks of EU gender equality law, I think EU law made a big contribution in challenging the social construction of sex, especially in the labor market, so challenging this idea that women are not suited to certain jobs, or less suited to certain jobs. Challenging the idea in the work-life balance directive also, to some extent, that only women can be carers, explicitly, there is carers leave, then also father's leave. Um, two landmark cases, really, historically speaking, in the case law are Decker, from my own country, from the Netherlands, who became a judicial question in 1990. Um, and it concerned pregnancy discrimination. Ms. Decker was pregnant at the time, early 80s, I think it was, that she applied for a job. And once the selection committee found out she was pregnant, they'd, even though she was not... even though she was the most qualified candidate, they decided not to offer her the job. And, um... Uh, this case went from the Dutch court to the Luxembourg court, and, uh, the Luxembourg court said, the Court of Justice said, pregnancy discrimination is sex discrimination. So, this woman, Ms. Decker, did not have to prove that she was treated less well than a man, because men couldn't get pregnant, there was no comparator. In the US, for example, this has been a whole big issue. Um... But in the EU Court of Justice, or what we now call the EU Court of Justice, quite early onset, no, pregnancy discrimination is a form of sex discrimination, buster.

Six years later came another, um... landmark case, case of PVS, uh, which concerned discrimination against somebody who had transitioned from... I think it was somebody who transitioned from male to female, if I remember correctly. Um, and then the court

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said the prohibition of sex discrimination also includes—with a nowadays, this term is old-fashioned, but—gender reassignment. And this was the first time an international court made such a statement. Um... and... from a... and it's... I mean, you can devote an hour to just analyzing this judgment. But what I want to say today, from this perspective of gender equality, it's very important to see that the court then already recognized that sex is not static. One sex can change. It's not a biological fact that is given for life, but can change, can be dynamic. Um, so those were the, let's say, the main big achievements.

At the same time, of course, challenges remain. For example, EU law, at some point in the 1990s, has decided to separate sex from sexual orientation. And that decision to say, okay, sexual orientation discrimination does not fall under sex discrimination reverberates, uh, until today. You see separate directive and for sexual orientation, discrimination, and gender equality are separate things in the EU. Um... and also... EU law is still, even though, yes, there is this recognition that sex is not static and there is this, um... Yeah, protection for... to some extent, protection for gender identity discrimination. Still, EU law is anchored in the male-female dichotomy. You see references to male and female everywhere in the legal texts. And it is very, very difficult to get out of that... out of that frame—to use an appropriate term for reframe.

Um, okay. Equality, then, as I already said, formal equality, treating likes alike; substantive equality is a more asymmetric notion that focuses on improving the position of the disadvantaged group. Um, and... I would say that current EU law and policy contains actually a spectrum of equality law concepts. So, but formula equality remains dominant, so most of EU law is very anchored in this idea of formal equality, treating likes alike—as, for example, with the notion of equal pay, eh? But that's not the whole story. So, there are also aspects of the law where obviously the legislature and also the... and policy as well, aim for more substantive results. And there is, in fact, a case where the Court of Justice has said that the directive on the prohibition of sex discrimination in employment, that the result pursued by the directive is substantive, not formal equality. Well, I must say that they haven't repeated this phrase much after that, so... I'm not entirely convinced, but I think a fair summary is to say that EU law

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nowadays contains a spectrum of equality law concepts, again, with the focus still mostly on formal equality.

And from that, um... What we also have seen in the past decades is a development in the notion of discrimination. So currently, different forms of discrimination are recognized and are actually prohibited under EU gender equality law: direct discrimination; indirect discrimination; prohibition of harassment and sexual harassment, which is actually considered a form of discrimination; what EU law calls victimization (I think the term retaliation is more appropriate); instruction to discriminate; discrimination by association; and most recently, intersectional discrimination. So, it's become quite a list, right? So, the conceptualization of discrimination has also developed a lot, uh, in the past decades. I will highlight a few now for you from these.

Uh, direct discrimination is defined under EU law as where one person is treated less favorably on grounds of sex than another is, has been, or would be treated in a comparable situation. So there, in this definition, you have three elements. There needs to be less favorable treatment, on grounds of sex, and there's this element of comparability, huh? A person needs to be less favorably treated on grounds of sex than another is, has been, or would be treated in a comparable situation. And that idea of a comparison has... is deeply problematic. Um, for... Um... well, perhaps if you want, we can talk about that in the... let's leave it there. We can talk about it in the discussion, but this has been criticized a lot, because, um... Most deeply, I think, because it doesn't manage to read structural forms of inequality. So, the point of inequality is not always comparability. There is not always somebody who is treated better, that's not the issue. Um, one other more sort of legislative point, sort of technical point to make, is that under EU law, as opposed to, for example, the European Convention on Human Rights, direct sex discrimination cannot be justified. So it's not an open justification, no, it cannot be justified unless explicitly a legislative exception applies, so unless the law itself states certain exceptions. So it's a very strong protection, this meaning, yeah? If there's an unequal treatment based on sex, in principle, this cannot be justified.

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Okay, indirect discrimination, then. Um... I've tried to visualize it here. Um... EU law defines indirect discrimination as where an apparently neutral provision criterion or praxis would put persons of one sex at a particular disadvantage compared with persons of another sex, unless, um... that, uh, it can be objectively justified. So, instead of focusing on unequal treatment with indirect discrimination, the focus is on the effects in practice. So, not so much on the treatment, but how this works out in practice. Um, the main three criteria here are apparent neutrality, particular disadvantage, and this objective justification. Let me give you two examples from the case law. The case where the Court of Justice first recognized this concept of indirect discrimination was Bilka from 1986, if I'm not mistaken. 1986, so almost 40 years ago now. The court held that the famous Bilka Kauf House in, uh, in Berlin—big store—there was... well, no, the case was concerning Bilka Kaufhaus, big department store, which treated its part-time workers slightly... the employment conditions for part-time workers were worse than the employment conditions for full-time workers. So, this is an apparently neutral criterion, right? Their practice did not explicitly distinguish between men and women. It explicitly distinguished between full-time and part-time workers. But in reality, the grand majority of part-time workers were women, and the grand majority of full-time workers were men, so the effect of that practice was that many more women were, uh, disadvantaged. And then the court said, yeah, back in 1986, that is indirect sex discrimination, and that is not allowed under EU law. That was also major. I mean, that concept already existed in the US since the 1970s. From the U.S, it emigrated to the UK, and then it came to the Luxembourg Court. But, uh, I think in most member states, certainly not in the Netherlands, this concept was not known yet—indirect sex discrimination. The EU court introduced it to most of continental Europe. Other more recent example is the case of Kaliri. It's a Greek case, where, uh, there wasn't... height requirement to be able to apply to work for the police force. So, I forgot whether... I think it was 170. People had to be 170 high in order to apply for the police force. Which, again, sounds like a neutral criterion—just a height requirement—but in effect, this excluded many more women than men. And there, the court also said, no, this is indirect sex discrimination, it's not allowed under EU law.

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Okay, so we have direct discrimination, we had indirect sex discrimination. The prohibition of harassment is of more recent date, came in the early 2000s, with those directives that I mentioned, um, covering racial discrimination and discrimination on these other grounds, as well as the gender recast directive. These directives now all prohibit harassment. And I think... Um... There, too, EU law was quite an innovative in framing, again, framing harassment as a form of discrimination. And, um... what I see, um... when I look at, um... the developments in the member states is that there is, at the member state level, at the national level, there is not a lot of case law yet on sexual harassment, and there's not a lot of national case law framing sexual harassment as discrimination. Uh, whereas the reality is that it is... it is a huge problem experienced by many women in their lifetime—not just women, of course, also queer people, non-binary people, and also men can all experience sexual harassment—but, uh... It's a very prevalent problem, and there is a legal response to it, but that is... or there is a prohibition, but that is, uh, well, difficult to enforce. So this is the definition, the EU law definition of sexual harassment. Um... I'll leave it there. But this definition is actually taken in... it's captured in several directives. Um... It cannot be justified, obviously, I think. Um... There is not much caseload, I already said, also not from the Luxembourg Court on Sexual Harassment. There's only, sort of, one case, as far as I know, that is sort of about that. Um, there are now more developments at national level because of... there's more since Me Too, there's more societal debate and recognition. But I think, um... Yeah, the law is not developing very fast on this topic. I mean, yeah.

Um, then, from this list of head types of discrimination, I just wanted to add one more, and that is intersectional discrimination. So, um... Intersectional discrimination has been described—I'm taking this definition doesn't come from the EU, I take this definition from the UN Women's Rights Convention—which has recognized that the discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion, belief, health, status, age, class, cost sexual orientation, gender identity. So for a long time, um, the critique was that the EU legislature and EU law was not doing enough with this topic. There's a lot of literature about it, there are plenty of very problematic EU law cases, um, famously about women

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wearing a headscarf in employment, where the court just consistently failed to take an intersectional perspective. And it was either gender or religion, but the combination of both was not... somehow not imaginable—legally imaginable—in EU law. And there's a lot of literature about that, but interestingly, there is now a legislative reference to the concept of intersectionality. And that is in the pay transparency directive of 2023, which states explicitly that discrimination based on a combination of sex and any other ground or grounds of discrimination protected under these other directives that I have mentioned before is forbidden. And the Equality bodies directives that were also from very recent date also refer to intersectionality. So that is interesting, that in the recent directives, intersectionality is recognized. And what this also... the question it raises for me is also, okay, so... it is recognized for equality bodies, it's recognized in relation to pay transparency—what does this mean for the rest of the area, for the rest of the area of EU gender equality law? Will this now also cause a change in the court's approach to intersectional cases and employment, more broadly, for example? So, I dare I expect developments to happen in the next years. Um, but the status quo is still that the case law, at least, is very problematic. And... yeah.

What is missing from that list—remember that list that I included a few slides back about forms of discrimination? Here, this slide. This slide, the forms of discrimination that are explicitly recognized under EU law—you don't see structural discrimination in that list, right? Structural discrimination is not a concept, uh, in EU gender equality law. But, uh, looking at other instruments, looking at other jurisdictions, I see a call, I see an increasing recognition of that. So, for example, the UN Women's Rights Convention, the UN Committee, the UN Committee on the Elimination of Racial Discrimination—they refer to structural discrimination frequently, as does, for example, also the Inter-American Commission on Human Rights, from which I've taken this quote of this definition of what structural discrimination is. I've seen references to structural discrimination also in several member states now. The Irish have been working on it, in Spain there's been work on this, in Belgium. So, this is a concept that is definitely emerging in the legal world. And I'd be interested to see what happens there in EU law.

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So, that actually brings me to the last part of this presentation, which is also the most difficult part, but perhaps we can also brainstorm about this together, because it's a big question. So, what are the major achievements, and perhaps more importantly, what are ideas for the future to further develop this... this area of law, which I understand is also a key issue of concern in We Frame, right? Um... So. Perhaps this is a very academic point, but I want to make it nevertheless. I think it's because it's a methodological point. How you assess EU gender equality law depends from your perspective. It depends on your methodology. So, I distinguish two main perspectives there in that regard: an internal perspective, which is the more legalistic perspective of how is the law constructed—the law in the books approach, more that positive law approach; or do you take an external perspective to this area of law, and do you ask, okay, what role is EU gender equality law actually playing in society? To what extent is it contributing to real experienced equality, or even inequality? And what I see is that the authors who take a more internal approach, who just look at the law, let's say, on its own premises, they tend to take a more positive—they tend to have a more positive assessment of EU gender equality law. Whereas scholars, activists, people working in the field that are not just law, who have a more practice-oriented perspective, tend to be much more critical, because they say, well, this area of law is, or this law is not contributing enough to equality. Um... I think probably the main achievement is—or the main impact it has had is actually on the development of equality law at national level. So, and for more information, I would like to refer you to this website of the European network of legal experts and gender equality and Non-Discrimination. I'm part of that network, and we have experts from all European countries, uh, including Italy, um, who analyze how EU gender equality law and EU non-discrimination law is implemented in Italy, in the Netherlands, in all these countries. And there, you can just see that, for example, in my own country, Dutch equality law is 90% EU law. So it has been implemented, and in that sense, it has a very... it had a huge impact—practical impact—in the member states. Um... noteworthy, also, again, is this point of its expanding reach. It all started with a small provision on equal pay, and now we have directives on... now we have equality bodies, we have a directive covering violence against women, we have maternity leave, paternity leave, parental

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leave, uh... We have a provision of sex discrimination in relation to goods and services. All of that grew out of Article 119 of the Treaty of Rome. Um... And EU law offers very strong protection against sex discrimination in employment and related areas. It also... oh, sorry, I see that sentence is not complete. It also, and here I'm thinking, for example, of the recent debate we're seeing in the UK about the definition of gender, where you see this strong sort of move back towards a biological concept, purely biological conception of gender. I think EU law does provide some protection against that, because it contains a clearer recognition that gender is not a biological construct. It really recognizes that gender is a social construct, and it is also... it recognizes... and it offers protection for some extent, to some extent, for gender identity discrimination. Partris. And it doesn't have hair, so... She has a new pajama, and she wanted to show me.

Um... Okay. Oh, sorry. Uh, next slide. I think this area of law is entering a new area... era, sorry—area, I should say era—ebook era. Um... Coda world is changing. But EU gender equality law is also changing. And I think the overarching challenge for me is the question: how to develop EU gender equality law that is capable of reaching more structural forms of inequality. That's a... It's a very big question. Um, I think the answer... Um, and without wanting to sort of glorify law—I think law can also be problematic, right? Law is part of the answer, but also part of the problem. Um... part of the way forward could be in deepening—better utilizing norms that are already currently there. For example, the prohibition of indirect discrimination, which has been there since this Bilka case of 1986, but is still... I will close the door. One moment. Even though we had this, um... this norm has been there for already almost 40 years. What you see also at national level is that there's hardly any... It's not utilized enough, not just because cases aren't brought forward, but, uh, also because it's difficult to know whether you have been the victim of indirect discrimination. It's difficult to show, it's difficult to prove. Um, the prohibition of the instruction to discriminate—people... It's not my work, but colleagues have recently argued that this is a very useful norm when it comes to algorithmic discrimination. So, um... there is... EU is currently... the European Commission as well, has been preoccupied for a number of years with algorithmic

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discrimination. And the idea, I think so far, is that the norms that are already currently there in the framework could be used also to address algorithmic discrimination. And, uh, especially the instruction to describe—the prohibition of the instruction to discriminate.

At the same time, of course, um... We can also think about whether introducing new substantive norms would be useful. For example, as, um... a committee has argued in Ireland, uh, to explicitly recognize the concepts of institutional and structural discrimination. And, um... To address this problem that I mentioned earlier of fragmentation, I think it is worthwhile thinking also, again, about the architecture—the legislative architecture as such. So, there are now so many different directives, and so many different norms, and, um, there's also overlap, to some extent, between those directives, so you have to be a super specialist to understand how it works—it's like a house that has been renovated too many times, you know? After the 10th renovation, it becomes... you could start... can ask yourself the question, well, perhaps I should, you know, build a new house. Um, and... There have been proposals some years ago to make a new, what they called, horizontal directive, which would cover all grounds of discrimination in one directive, instead of having this bifurcation between gender on the one hand and the other grounds of discrimination, on the other hand. But that was not politically feasible. I doubt whether it's politically feasible now. But it is... it is at least something to keep imagining, I think.

Now, that brings me to my last slide, which says, Grazie Mile. And if you have comments, questions, or anything, you can reach me at my email address. Thank you very much, and I look forward to your comments.

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