

## Article

# EU Institutions: Revisiting Gender Balance and Women's Empowerment

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**Abstract:** Equality Gender balance between men and women is one of the most current controversial issues in recent years that provokes a number of debates, questioning whether it really exists or is instead a myth. This article examines how the issue is regulated by European Union (EU) law and to what extent the legal framework is implemented into the current composition and work of European institutions. The trend of women's empowerment is examined on the example of some of the EU institutions, mainly the European Commission and the European Parliament. The authors point out that, at the moment, three of the institutions included in the single institutional framework of the EU are headed by women—Ursula von der Leyen, Roberta Metsola, and Christine Lagarde—and the European Ombudsman is a woman. This represents an undisputed achievement in the field of gender balance at a higher political level within the EU as well as the appointment of the first-ever commissioner for equality. The newest secondary legislation framework is observed: Directive 2019/1158/EU on work–life balance and the latest development with regard to the female representation on corporate boards (Women on Boards Directive). The article also concludes that while some of the institutions have managed to make steps towards a real gender balance during recent years, not all of the Member States have experienced such progress, and this is evident in the organization and work of the Council of the EU. Although the introduction of quotas for women on company boards has been assessed ambiguously, it represents a necessary action 'to break the glass ceiling' and would give a new impetus to women's empowerment within the EU.



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## 1. Introduction

Gender equality has become a part of the international human rights agenda by the Universal Declaration of Human Rights (UDHR), which was adopted by the United Nations General Assembly on 10 December 1948. The document recognized that “all human beings are born free and equal in dignity and rights” and that “everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, . . . birth or other status. Since then, especially in the last five decades, significant progress has been made in women's equality worldwide. It is worth noting that the progress of the European countries has implemented initiatives to achieve a more gender-balanced workforce by introducing family-friendly policies, trying to reduce the gender pay gap and promoting women's career development (Salinas and Bagni 2017). At present, gender equality is a part of the modern system of human rights and freedoms that combines both international and national legal principles and norms related to the first, second, and third generations of human rights, which are linked to special mechanisms for their protection (Belova-Ganeva 2013).

Equality between women and men is also recognized as one of the main values of the European Union, enshrined in Article 2 of the Treaty on the European Union (TEU). Failure to comply with it represents discrimination, which is prohibited, as it infringes on the right to equal treatment of every person (Ivanova 2020). Equality before the law and protection

against discrimination, regardless of which ground, represent both sides of the same coin. The first side positively expresses the idea of equal opportunities for physical persons to acquire and practice rights, while the other is related to the elimination of discrimination as a denial of equal possibilities (Chankova et al. 2016).

A few clarifications should be made at the outset in order to distinguish the concepts of gender equality, woman empowerment, and gender balance. Since signing the Treaty establishing European Economic Community in 1957, the complex and multifaceted gender equality issue appears on the EC/EU agenda. Although at that time there was no clear concept about gender equality, its first manifestation had been in the economic and labour sphere through the principle of non-discrimination and ‘equal pay for equal work’. Decades later it becomes obvious that gender equality represents a real challenge and, at the same time, a highly political concept that sometimes differs (slightly or apparently) not only among the different international organizations (EU, CoE, OECD, and UN), as it varies in meaning depending on the geographical, historical, and theoretical context (Gender Inequality Index Human Development Reports (undp.org) (n.d.)). Undoubtedly, at world level, Europe remains the women’s continent, although it is still necessary to make efforts to achieve more progress in relation to Goal No. 5 of the United Nations’ Sustainable Development Goals. Similar terminological confusion is observed within the EC/EU and its institutions. One can also notice distinctive meanings of gender equality terminology in the EU strategic acts of different time periods. While in the initial decades the focus was placed on equal treatment of women and men, later on, it has been put on the equal opportunities that did not depend on whether individuals are born male or female. Thus, EIGE definition of gender equality recognizes the diversity of different groups of women and men and relies on an intersectional approach to gender. According to the same institution, empowerment is a “process by which women gain power and control over their own lives and acquire the ability to make strategic choices” (<https://eige.europa.eu/thesaurus/terms/1102>, accessed on 5 December 2022). Hence, it refers to the absence of barriers to economic, political, and social participation on grounds of sex and gender and could be considered vital for gender equality. The term also has its quantitative and qualitative dimensions, and some of them are addressed below. Currently, EU gender equality policies comprises several directions, namely overcoming of gender pay gap, actions to improve work–life balance, actions to promote women’s equality in political and economic decision-making, as well as actions to eliminate gender-based violence within the EU.

However, the observance of gender equality means equal participation of men and women in all spheres of life, in proportion to their share of the local population. However, there are not rare cases in which the proportion is violated, and in certain areas, especially in the management of different units and levels, the male predominates. Thus, gender balance means “human resources and equal participation of women and men in all areas of work, projects or programmes.” (<https://eige.europa.eu/thesaurus/terms/1148> accessed on 5 December 2022).

Women’s empowerment is related largely to gender balance, and quotas for women’s participation in governance at all levels—including international, national, and regional institutions, commercial companies, non-profit organizations, and in whole areas of life—are determined to ensure this balance.

Secondly, it should be noted that all EU gender policies, which should be aimed at promoting equality, are instead related to reforming the EU social model towards more neoliberal, flexible, and high-employment markets of labour, which leads to potential abuses of the gender equality agenda in Europe (Rubery 2015).

Research studies of EU gender equality policies show that gender equality is both supported and contested within the EU. Not only does the European Parliament or the European Commission or the Council sometimes put forward indefinite framings of gender equality problems and solutions, but also within each institution, different meanings are attributed to gender, equality, women, and men. The thorough analysis shows that the

power relations mobilized in the European construction always have had important gender and cross-sectoral dimensions (Kantola and Lombardo 2018).

Bearing in mind the dynamic and pervasive nature of discrimination, the wide expansion of EU policy and the development of feminist movements seeking equality, it is easy to mistake rhetoric for reality. It is not a coincidence that the European Commission emphasizes that the implementation of equality depends last but not least on the creation of a common language among all those who strive for it (Elman 2007).

However, in order to assess whether gender equality is already a fact, it should be observed whether the acts regulating this issue are actually applied in practice and how the EU institutions contribute to their implementation. It is necessary also to evaluate how the legal framework for gender equality is incorporated into the Union's policies and the idea of EU legislation reform in this direction (Woodward and Van der Vleuten 2014).

## 2. Legal Framework: Methods and Methodology

It should be emphasized that although the legislation regarding non-discrimination on the ground of sex has undergone an exceptional development over the years, it was already enshrined in the Founding Treaties when the Treaty establishing the European Economic Community introduced the principle of equal pay for equal work carried out by men and women.

The Agreement on Social Policy annexed to the Protocol on Social Policy of the Maastricht Treaty (TEU) in Art.2, para 1 has stipulated that “... the Community shall support and complement the activities of the Member States in the following fields: ... equality between men and women with regard to labour market opportunities and treatment at 112 work”<sup>1</sup>.

The next ‘general revision’, namely the Treaty of Amsterdam, introduced in Art. 13 the opportunity to take appropriate action to combat discrimination on the basis of various grounds (racial or ethnic origin, religion or belief, disability, age, or sexual orientation), including on sex, providing a mechanism through which the European institutions could take all necessary measures in case of unlawful discrimination. At that moment, such a clause in the treaty represents an enormous step forward for those who consistently combat discrimination based on sex and support equality in various fields. Until then, the EC/EU had left such matters entirely up to the Member States’ competences.

At a later stage, the Charter of Fundamental Rights of the European Union, defined as the constitutional framework for recognition and the application of a legally binding catalog of fundamental rights (Tzemos and Margaritis 2021), states that gender equality occupies a separate place, in particular, in the provisions of Art. 21 and Art.23 (Yonkova 2017)<sup>2</sup>.

Within the European Union, the idea of gender equality is a common value that contributes to the creation of an area of social justice and respect for the fundamental rights and freedoms of individuals (Porumbescu and Pogan 2021). The principle is also enshrined in Art. 8 of the Treaty on the Functioning of the European Union (TFEU) and according to it “in all its activities, the Union shall aim to eliminate inequalities, and to promote equality between men and women”. The principle of positive action is also recognized in Article 157, par. 4 of TFEU. Within the EU, the principle of positive action has been traditionally considered as an exception to the principle of equal treatment for men and women. This

<sup>1</sup> The Agreement on Social Policy of 2 February 1992 proposed a constitutionally recognized role for the social partners in the community legislative process, which had formerly engaged only the EU institutions. The agreement proposed an extension of EC competences in employment and industrial relations as well as a radical change in the community legislative process for social policy.

<sup>2</sup> Art. 21 of the Charter of Fundamental rights in the European Union forbids discrimination on grounds of sex, race, colour, ethnic or social origin, genetic features, language, religion or other belief, political opinion, membership of a national minority, property, birth, disability, age, or sexual orientation, while Art. 23 is dedicated to equality between men and women in all areas, including employment, work, and pay. The second paragraph states that the principle of equality shall not prevent positive measures to give advantages to the under-represented gender (in a workplace, for example).

means that all national measures in the form of positive action in favour of women in order to promote equality between men and women are acceptable.

Meanwhile, as secondary legislation, the Council adopted Directive 2004/113/EC, implementing the principle of equal treatment between men and women in the access to and supply of goods and services. The Directive aims to ensure the equal treatment of men and women as a fundamental principle of the European Union, referring in the fourth recital to Articles 21 and 23 of the Charter of Fundamental Rights of the European Union that prohibited any discrimination based on sex. It should be pointed out that the Directive contains legal definitions of direct and indirect discrimination<sup>3</sup>. The act also creates effective tools designed to assist Member States and the European Union in achieving the objective of establishing “... a framework for combating discrimination based on sex in access to and supply of goods and services, with a view to putting into effect in the Member States the principle of equal treatment between men and women.” (Art. 1).

The package of secondary legislation regulating gender equality also includes Directive 139 2006/54/EC of the European Parliament and of the Council on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), which was designed to combat any direct or indirect discrimination on the ground of sex in all aspects, such as employment, working conditions, remuneration, and social security schemes as well as to make the gender equality principle more effective by the establishment of appropriate procedures. Another relevant document is Directive 2010/41/EU, implementing the principle of equal treatment between men and women engaged in activity in self-employed capacity.

Gender discrimination issues are not only covered by European Union legislation but also are included in numerous commitments undertaken by the EU institutions and are apparent in some strategic documents. Their primary goal is the creation of an area in which all EU citizens will benefit from exercising equal rights, regardless of their sex. Among the most important documents is the European Pact for Gender Equality (2011–2020), in which the Council of the EU reaffirms its commitment to implement the principle of equality between women and men, and in particular to eliminate the gender disproportion in terms of employment, social protection, and payment; to promote a better work–life balance for women and men as well as to combat all forms of violence against women. Another document is the Strategic Commitment to Gender Equality (2016–2019), which sets out the framework for the Commission’s work program on gender equality for the period and outlines its commitment to promoting gender equality in all common policies and EU funding programs as well as outside the EU.

The present article aims critically to analyze the gender situation and to observe the development of the balance between men’s and women’s representation in the governing bodies of the European Union. The issue has been explored in recent years but needs further attention and research after the agreement reached in June 2022. The achieved progress is of significant importance since the European institutions should serve as an example to the Member States in striking a balance between men and women and adopting and implementing the appropriate legislation. The article also concludes that while some of the institutions have managed to make steps toward a real gender balance during recent years, not all of the Member States have experienced such progress, and this is evident in the organization and work of the Council of the EU. Although the introduction of quotas for women on company boards has been assessed ambiguously, it represents a necessary action ‘to break the glass ceiling’ and would give a new impetus to women’s empowerment

<sup>3</sup> Article 2 of the Directive 2004/113/EC describes **direct** discrimination as a situation “where one person is treated less favourably, on grounds of sex, than another is, has been or would be treated in a comparable situation”. According to the same provision, there is **indirect** discrimination “where an apparently neutral provision, criterion or practice would put persons of one sex at a particular disadvantage compared with persons of the other sex, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary”.

within the EU. Due to the sensitive nature of the issue, a complex methodology has been used, combining several approaches and including the historical and comparative methods.

To achieve the goals of the research, the article uses numerous statistical data collected from the official websites of European and national institutions, the observation and analysis of which allows the authors to reach scientifically based conclusions regarding the achievement of gender balance and the empowerment of women both in the EU institutions and at the national level. The methodology used when observing the data shows the relationship between the degree of achieving gender balance and the empowerment of women in the Member States, which applies to the composition of the European institutions and, in this relation, determines the degree to which the institutions respect the gender balance and tolerate the empowerment of women. If more Member States have reservations on these issues and send fewer women as national representatives to various European institutions, this undoubtedly will affect the gender balance at the European institutional level. At the same time, the analysis of the official data shows that in the leadership of the European institutions, the empowerment of women has been largely achieved.

### 3. Gender Equality Strategy and the EU's Newest Legislative Development

The above-mentioned line of political behavior could be found in another important 175 strategic document named "A Union of Equality: Gender Equality Strategy 2020–2025" 176 ([Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Brussels, 5.3.2020, COM \(2020\) 152 Final 2020](#)). It was pointed out that the European Union is a world leader in terms of gender equality, as it includes 14 of the top 20 countries in the world with regard to the implementation of gender equality are EU Member States ([Equal Measures 2030 SDG Gender Equality Index 2019](#)). An interesting aspect of the Strategy is that, among other areas where gender equality is important, it places a special emphasis on women's empowerment and parity in the leadership throughout society. It stated that there are still a few women in leadership roles, whether in politics or government bodies, in the higher or supreme courts, or on trading company boards. The document recognizes the need for diverse leadership in order to overcome the complex challenges faced by decision-makers and indicates women's inclusion as essential for innovative approaches that would better contribute to a dynamic and prosperous society within the EU. Another appeal made by the European Parliament in its resolution adopted in 2018 concerned the underrepresentation of women in Europe's digital sector ([European Parliament Resolution of 17 April 2018 on Empowering Women and Girls through the Digital Sector \(2017/3016\(RSP\)\) 2018](#)). The Member states have been urged to encourage girls and women to obtain education or to apply for a job in this field in order the full integration of women into ICT sectors to be ensured ([European Parliament Resolution of 17 April 2018 on Empowering Women and Girls through the Digital Sector \(2017/3016\(RSP\)\) 2018](#)). Directive 2019/1158/EU on work–life balance for parents and carers represents a new paradigm and is the only concrete act in the current EU legislative framework on gender equality. It aims to increase female participation in the labour market and reduce the gender gaps (pay gap and pension gap) to give workers a real choice to reconcile career and obligations in child care by adapting the current legal framework as well as address deficits in care and create tax and other financial benefits for second earners. The period for the implementation of the Directive spanned 3 years (until 2 August 2022), but a longer period is envisaged for a specific provision: 5 years for the compensation of the last two weeks of parental leave (until 2 August 2024). The personal scope of the Directive includes 'workers' as defined by national law and takes into account the case-law of the Luxembourg Court, while its substantive provisions concern paternity leave (Art.4), strengthened parental leave (Art.5), carers' leave (Art.6), etc. The enhanced legal protection is provided against dismissal (Art.12) or discrimination (Art.11) for workers who request or take leave and flexible working arrangements ([Luetz 2019](#)).



One of the most important and at the same time long-awaited development of EU instruments concerns the Commission's proposal for a Directive that aims to improve gender balance on boards of corporate entities ([Directive of the European Parliament and of the Council on Improving the Gender Balance among Non-Executive Directors of Companies Listed on Stock Exchanges and Related Measures COM \(2012\) 2012](#)). It was announced ten years ago on 14 November 2012, but afterwards was blocked by the Council. The document had set a quantitative objective—to achieve participation of at least 40% women as non-executive directors of trading companies that have been listed on stock exchanges. The Directive proposal leaves discretion for each Member State as to how a comparative assessment should be defined in its national legislation in order to satisfy the principles of selection procedure for the posts of non-executive directors. The criteria for board positions were to be established by the corporate entities themselves in accordance with the national and the EU legislation ([European Commission et al. 2014](#)). The critical analysis, however, as pointed out in a Norwegian case, is that the proportion of female directors has still remained an endogenously determined factor, not depending a great deal on the companies' internal decisions and policies ([Jourová 2018](#)). Norway is not an EU Member State, but it is a part of the European Economic Area (EEA), and the country has implemented a great part of the EU secondary legislation, concerning especially the Single Market and the Four Freedoms. Norway's situation indicates satisfactorily at first glance results that have been a consequence of the mandatory gender quota law introduced in the country. (A similar approach has been introduced in France). The Norwegian legislator even proposed a liquidation of a company as a penalty for non-compliance with the mandatory gender rules. However, this resulted in the fact that many commercial entities preferred the legal form of private rather than public companies and refrained from listing on the stock exchange in order to escape from the mandatory gender quota. Although some EU Member states had also introduced mandatory gender quotas in their legislation, in some of them, such as Germany and Denmark, there has not been observed significant progress due to the lack of sanctions and penalties ([Jourová 2018](#)). This is the main reason for the majority of EU member states to make a choice in favour of voluntary or hybrid approach when introducing a gender balance legislation.

As it is reported by the Commission in its factsheet in 2016, there has been slight progress with regard to the improving gender balance at governing boards, including non-executive positions—approximately one in fourteen. Nevertheless, the [Commission \(2012\)](#) pointed out that in same year, the woman representation has more than doubled, compared with the situation in October 2011. The new female representatives differ greatly compared with the retired male directors: being young, highly educated, and self-confident, although there still have been voices in favour of more experienced men of solid age for some specific or more responsible positions. Amongst top executive positions, however, the figures are even worse, and the number of companies that have a woman as a Chief Executive Officer (CEO) remains relatively low. Progress can be seen in some of the most economically developed countries, but it should be noted that the significant improvements took place in Member states with adaptive and flexible legislation or with profound and intensive public debate on the issue ([Gender Balance 2016](#)).

In June 2022, there has been achieved 'a landmark' political agreement in the EU framework for the increased female representation on the boards of corporate entities that have been listed publicly on the stock exchange. This undoubtedly is significant progress after the Commission's proposal that aimed at gender parity on the companies' government boards being blocked in the Council of the EU for almost a decade. It should be noted that some Member states also challenged the Directive proposal due mostly to the principle of subsidiarity. Due to the serious differences among the countries (45.3% in France, while fewer than 1 in 10 non-executive directors were women in Hungary, Estonia, and Cyprus), the Member states must fulfill their obligation to implement the so-called "Women on Boards" Directive by 30 June 2026, instead of by 31 December 2027, which was the initial Council's proposal. The main goal of the Directive in term of figures is for at least 40%

of non-executive director posts<sup>4</sup> or 33% of all director posts to be occupied by the under-represented sex, usually women (Vasiljević and Sunko 2017). As noted by the authors Vasiljević and Sunko, the proposed figure of 40% is situated “between the minimum of the ‘critical mass’ of 30%, which has been found necessary to have a sustainable impact on board performance and full gender parity which is 50%”. The companies could also be fined for failing to ensure enough women’s representation, and some board appointments could be cancelled by national courts for non-compliance with the legal provisions. Small- and medium-sized enterprises with fewer than 250 employees are excluded from the scope of the Directive.

It seems curious that the Court of Justice of the European Union (CJEU’s) caselaw does not provide a clarification concerning how to interpret and apply provisions relevant to gender equality, and the Court’s position has still been ambiguous and uncertain. As is mentioned in theory, “the CJEU has not yet clarified what exactly constitutes giving automatic preference to women” (Vasiljević and Sunko 2017). However, it should be noted that once again the Court, in its practice, gives an exceptional impetus to the development of the legal framework of the European Union, this time in the field of gender equality. The criteria defined by the CJEU’s case-law have been summarized in 2010 Commission’s Communication (Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions ‘Strategy for Equality between Women and Men 2010–2015. COM (2010) 491 Final 2010) as follows<sup>5</sup>: (1) The measures must concern a sector in which women are **under-represented** (Kalanke case, C-450/93)<sup>6</sup>; (2) They can only give priority to **equally qualified** female candidates over male candidates (Abrahamsson case, C-407-98)<sup>7</sup>; and (3) They must not give **automatic and unconditional priority** to equally qualified candidates of the under-represented sex, but must include the possibility of granting exceptions in justified cases which take into account the individual situation, notably the personal situation of each candidate (Marschall case, C-409/95)<sup>8</sup>.

Undoubtedly, both cases of Kalanke and Marschall had a significant impact on the further legal cases dealing with positive discrimination, quotas, and gender equalities within the European Union. Starting with provisions regarding promotion and employment in specific work sectors and finishing with women’s quotas in national parliaments, the debate still persists. The main question being whether prioritizing one gender to fight inequality could represent a form of (positive) discrimination. In its case-law, the Court considers that the positive action in favour of women aimed at achieving equal “opportunity” cannot

<sup>4</sup> On non-executive director boards, see Vasiljević and Sunko (2017).

<sup>5</sup> Commission, Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions ‘Strategy for equality between women and men 2010–2015’ COM (2010) 491 final (**emphasis in the original**).

<sup>6</sup> Particularly, the famous Kalanke case (C-450/93 Kalanke v. Freie Hansestadt Bremen, ECLI:EU:C:1995:322) deals with a situation of promotion in the workplace between two candidates of different sexes but of equal qualification, and the priority was unconditionally given to the woman candidate, citing under-representation of women in the sector. The case was trying to seek clarification on whether giving priority to women to fill the quotas, intended for equal representation, had been in accordance with the national rules; were these rules permissible and non-discriminatory, despite the equal qualification of the candidates of different sexes, as well as should there be an automatically given priority to the under-represented sex. The CJEU concluded in par. 22 that “national rules which guarantee women absolute and unconditional priority for appointment or promotion go beyond promoting equal opportunities and overstep the limits of the exception in Article 2(4) of the Directive”.

<sup>7</sup> C-407-98 Katarina Abrahamsson and Leif Anderson v. Elisabet Fogelqvist. Reference for a preliminary ruling: Ö verklagandenämnden för Högskolan - Sweden. ECLI:EU:C:2000:367.

<sup>8</sup> Two years after the Kalanke case, in the Marschall case, the Court ruled that “... a national rule which ... contains a saving clause does not exceed [the limits of Article 2(4)] if, in each individual case, it provides for male candidates who are equally as qualified as the female candidates a guarantee that the candidatures will be the subject of an objective assessment which will take account of all criteria specific to the individual candidates and will override the priority accorded to female candidates where one or more of those criteria tilts the balance in favour of the male candidate. In this respect, however, it should be remembered that those criteria must not be such as to discriminate against female candidates”. C-409/95 Marschall v. Land Nordrhein-Westfalen, ECLI:EU:C:1997:533.

pursue equal “results”. The ECJ has categorized hiring and promotion as results, thus precluding the possibility of giving preference to the under-represented sex in hiring or promotion cases where the preference is given automatically and absolutely. Another important conclusion is that vocational training and calls to job interviews are considered to be opportunities, and, therefore, preferential treatment accorded to the under-represented sex in these situations are considered with less severity. As conditions for the lawful positive action, the Court accepted:

- There should be existing inequality, i.e., one sex is under-represented.
- The positive action should be directed at rectifying that particular existing inequality and targets the conditions giving rise to the inequality, (*Commission v France*<sup>9</sup>, *Briheche*<sup>10</sup>).
- No automatic absolute preference might be given to one sex in regard to hiring or promotion (*Abrahamsson, Marschall*).
- Preference might be given to the under-represented sex in regard to hiring or promotion if there is a “saving” clause, i.e., possibility of bringing individual arguments forward that may tilt the decision in favour of a person of the over-represented sex.

Interestingly, the Court of Justice of the European Union has established the criteria (although this is not an easy process) that need to be met in order to reconcile the two concepts, namely the concept of formal equality of treatment and the principle of positive action aimed at bringing about *de facto* equality, both of which are recognized in the Charter as well as in Article 157 TFEU. With a great extent of probability, if today the CJEU compares the rules set by the Directive through the proportionality test, there might be a stronger and objective justification for granting automatic and unconditional priority to one of the candidates as well as a lawful explanation as to why priority is given to the under-represented sex in a comparable situation (the same work experience, education, etc.). Another factor that speaks in favour of the Directive and its compatibility with the principle of equality in the scope of EU law is the fact that some authors consider the Directive itself as “a positive action measure set by the EU, which by its very nature is intended to give some preference to a certain under-represented group by setting special quotas to ensure equal participation in economic activity” (*Vasiljević and Sunko 2017*). The others even asked: “Are quotas therefore a necessary evil?” (*Maiso Fontecha 2013*).

Today the EU is a step closer to achieving its goal for the biggest European companies “to become serious when it comes to gender equality in economic decision-making”, as the former President of the European Commission described the goal ten years ago when he announced the proposal. (*Barroso 2012*). Nevertheless, there is still a way to go to achieve equal opportunities for women to participate in and to lead European society.

#### 4. The Gender Balance in the Commission

Yet, how do the European Union institutions themselves respect the principle of gender equality in terms of their composition, leadership, and decision-making process? The answers to this question are partly contained in the Strategy for Gender Equality itself, which states that equal opportunities for participation are essential for representative democracy at all levels—European, national, regional, and local—and instruct the Commission in cooperation with the European Parliament and national parliaments, with Member States and civil society to implement women’s inclusion by effective procedures and tools.

The document indicates that EU institutions and bodies should not be exempted from the requirement to ensure gender balance in the main management positions. In this sense, the Commission is a positive example due to the insistence of the current President,

<sup>9</sup> Commission of the European Communities v French Republic. ECLI:EU:C:1988:485.

<sup>10</sup> *Serge Briheche v Ministre de l’Intérieur, Ministre de l’Éducation nationale and Ministre de la Justice*. Reference for a preliminary ruling: Tribunal administratif de Paris—France. ECLI:EU:C:2004:574.



Ursula Von der Leyen<sup>11</sup>, to achieve an equal representation of both sexes in the collegium. It is worth noting that Von der Leyen's Commission has the largest number of female commissioners to date—13.

It is necessary to emphasize that Ursula von der Leyen is the first female President of the European Commission. Currently, the gender balance in the leading EU institutions' positions has been achieved since at the moment another two institutions are headed by women. Firstly, the European Parliament has elected Roberta Metsola<sup>12</sup> as its President, and she is the third woman after French representatives MEPs Simone Veil (1979–1982)<sup>13</sup> and Nicole Fontaine (1999–2002) who have deserved this post. In the second place, it should not be underestimated that Christine Lagarde is the first female President of the European Central Bank. The detailed list can be supplemented by Emily O'Reilly<sup>14</sup>, who is the first woman to be nominated as the third European Ombudsman and re-elected for a second term in 2019 (Marin and Kovatcheva 2019). It should also be noted that von der Leyen's Commission not only declares gender equality as one of its major priorities, but as a whole, it is the first gender-balanced college with the first Commissioner responsible for equality (Helena Dalli).

Yet, has a similar balance been achieved among the rest of the institutions? As has been mentioned above, the current composition of the European Commission has the highest number of female commissioners compared with previous ones, and until recently, it has been male-dominated over the years. All the Presidents of the Commission have been men, starting with Walter Holstein (1958–1967) and ending with Von der Leyen's predecessor Jean-Claude Juncker (2014–2019). The first female Commissioners were included only in 1989 in Jacques Delors' Commission. There were the two Commissioners—Christiane Scrivener from France, who takes over the portfolio of taxation, customs union and consumer protection and later Vasso Papandreou from Greece, being responsible for employment, industrial relations, and social affairs. In the next Commissions, the number of women continues to increase.

Since the Eastern enlargement in 2004, some newcomer countries have set a good example by sending women to the European Commission, including Poland, Latvia, and Lithuania. In the first Barroso Commission (2004–2009), there were eight female commissioners. Ten women have been part of the Commission after the 2007 enlargement when Bulgaria and Romania joined the EU. These are Sweden, Luxembourg, Poland, Lithuania, the Netherlands, Denmark, Austria, Cyprus, Great Britain, and Bulgaria.

Sweden and Bulgaria, since becoming EU Member States, have always nominated women as commissioners and are setting a good example for the other Member States.

<sup>11</sup> Ursula Gertrud von der Leyen is a German politician who has been serving as the President of the European Commission since 2019. Previously (2009–2019), she was a Member of the German Bundestag, Federal Minister of Defence, Germany (2013–2019), Federal Minister of Labor and Social Affairs (2009–2013), and Federal Minister for Family Affairs, Senior Citizens, Women and Youth, Germany (2005–2009) [https://ec.europa.eu/commission/commissioners/2019-2024/president\\_en](https://ec.europa.eu/commission/commissioners/2019-2024/president_en) (accessed on 9 December 2022).

<sup>12</sup> Roberta Metsola was elected President of the European Parliament in January 2022. She was first elected to the European Parliament in 2013, becoming one of Malta's first female Members of the European Parliament. Metsola was re-elected in 2014 and then again in 2019. In 2020, she was elected as the First Vice-President of the European Parliament, becoming the first Maltese national to hold the post. She was responsible for the European Parliament's relations with national parliaments and for the Parliament's participation in the interreligious and non-confessional dialogue (Article 17 TFEU). Within the European Parliament, President Metsola was the EPP Group's Coordinator in the Committee on Civil Liberties, Justice and Home Affairs, between January 2017 and 2020. Professionally, she is a lawyer who specialised in European law and politics. <https://the-president.europarl.europa.eu/en/the-presidency> (accessed on 3 November 2022).

<sup>13</sup> Simone Veil, a Holocaust survivor, was a French magistrate and politician who served as Health Minister in several French governments and was a President of the European Parliament (1979–1982), being the first woman to hold that office. As health minister, she is best remembered for advancing women's rights in France, in particular, the adoption in 1975 of legislation that permitted abortion.

<sup>14</sup> Emily O'Reilly was first elected as the European Ombudsman in July 2013. Following the European Parliament elections, she was re-elected for a five-year mandate in December 2014 and again in December 2019. Previously, she had been Ireland's first female Ombudsman and Information Commissioner. Emily O'Reilly is a former journalist and broadcaster, whose career has attracted significant domestic and international recognition. <https://www.ombudsman.europa.eu/en/emily-oreilly> (accessed on 13 August 2022).

Denmark stands out with five female commissioners (in the last 27 years, it has not been represented by a female commissioner except in the Prodi Commission), and Luxembourg, Poland, and Cyprus, with three female commissioners each, while major and old member states such as Italy, France, Great Britain, and Spain have rarely had female commissioner.

In 1999, Spanish politician Ignacia de Loyola de Palacio became the first woman to serve as Vice-President of the European Commission and Commissioner responsible for Parliamentary relations, Transport and Energy. The first Barroso Commission also had its female vice-president in the face of Margot Wallström from Sweden. In the second Barroso team, there were three women occupying vice-president posts, namely Catherine Ashton, Vivian Reding, and Neelie Kroes. The Juncker Commission will remain in history with two female vice-presidents—Federica Mogherini and Bulgarian Kristalina Georgieva. Von der Leyen's Commission has repeated the best achievement of three women holding vice-president positions—Margrethe Vestager from Denmark, Věra Jourová from the Czech Republic, and Dubravka Šuica from Croatia.

It also should be noted that since its establishment in 1999, the post of High Representative for Common Foreign and Security Policy, which at the same time is combined with the Commission's Vice-President position, has been held evenly by two men (Javier Solana and Josep Borrell) and two women (Catherine Ashton and Federica Mogherini). At the same time, since its creation in 1952, the Court of Justice of the European Coal and Steel Community and its successors—the Court of Justice of the European Communities and today the Court of Justice of the EU—has never been presided over by a woman<sup>15</sup>. This is a rather strange situation for a more emancipated CJEU, compared with the United Nations International Court of Justice, that has been presided over by Baroness Rosalyn Higgins (2006–2009). A similar conclusion can be drawn about the Court of Auditors, which has not been chaired by a woman since its establishment as an EU institution<sup>16</sup>. The Council and the European Council have not been the primary focus of the present study since, according to the Treaties, they are formed by national representatives and reflect the political traditions of each Member State (Belova and Kochev 2018).

### 5. Gender Balance in Other EU Institutions

It can be concluded that in the European Commission, the gender equality balance has almost been achieved at 47% of female commissioners in Von der Leyen's Commission, while this issue has not yet been fully resolved in the other EU institutions. The situation is hardly satisfactory, bearing in mind that the European Parliament was the first institution headed by a woman, and the successful periods of Simone Veil, Nicole Fontaine, and the current president Roberta Metsola are an integral part of the history of the institution. Despite the fact that women have been represented in the management of the European Parliament, the total number of female members of the European Parliament seems relatively low.

Statistics show that there has been an increase in the number of female MEPs in recent years, but there is still much to be done in order to achieve parity between men and women within the European Parliament. Between 2009 and 2014, 35% of the representatives in the European Parliament were women; after the elections in 2014, this percentage slightly increased to 37%, and later in 2019 to 41%. It should be noted that compared with the first elections for the European Parliament (1979—16%, 1984—18%, and 1989—19%), the percentage has increased significantly, but is still below the desired parity (<https://www.europarl.europa.eu/about-parliament/en/in-the-past/previous-elections>, accessed on 8 August 2022), bearing in mind that from 2021, the percentage of women Members of the European Parliament has fallen and now stands at 38.9%.

<sup>15</sup> The current President of the Court of Justice of the EU is Prof. Koen Lenaerts from Belgium, whose term expires on 6 October 2024, [https://curia.europa.eu/jcms/jcms/Jo2\\_7026/en/](https://curia.europa.eu/jcms/jcms/Jo2_7026/en/) (accessed on 9 December 2022).

<sup>16</sup> Tony Murphy, the Irish Member, was elected on 20 September 2022, as the ECA's 12th President. <https://www.eca.europa.eu/en/Pages/Structure.aspx> (accessed on 9 December 2022).

However, the situation in regard to the gender balance in the management and organization of the current European Parliament is different, compared with the previous one, since there is a large increase in the number of women holding responsible positions. In the 2014 European Parliament, the most important posts were held by men, only two out of seven chairpersons of parliamentary committees were women, and only five women were elected as vice-presidents of EP. The most important positions in the European Parliament were also predominantly occupied by men ([https://ec.europa.eu/info/policies/justice-and-fundamental-rights/gender-equality/equality-between-women-and-men-decision-making/achieving-gender-balance-decision-making\\_en](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/gender-equality/equality-between-women-and-men-decision-making/achieving-gender-balance-decision-making_en), accessed on 8 August 2022).

Compliance with the gender equality principle within the European Parliament depends to a large extent on the national campaigns, on the candidate lists of the national parties in the Member States (elective places for women or not), and to the degree that Member States respect the principle of gender equality. As can be seen from the results of the 2019 European Parliament elections, the gender equality balance has been observed in relatively few countries. There is even a slight preponderance of women in Sweden—55%, followed by France, Luxembourg, the Netherlands, Austria, Finland, Lithuania, Malta, and Slovenia, where the parity between the representatives of both sexes has been achieved. Malta represents a curious case, with a very low level of women participation in national politics compared with other EU Member States, but at the same time, the country has achieved gender parity in the European Parliament, with 50 % of its members being women (European Parliament 2018). Spain comes next, with 47% of members of the European Parliament who are women. At the other pole are countries such as Cyprus, with no female MEP; Slovakia, where 85% of MEPs are men; Romania, where 78% of MEPs are men; Latvia, where 73% of MEPs are men; and Bulgaria, where 71% of MEPs are men. Some average results are obtained in the rest of the Member States—closer or further away from achieving the equality balance (<https://www.europarl.europa.eu/about-parliament/en/in-the-past/previous-elections> accessed on 8 August 2022). It should also be noted that in the European Parliament, women currently chair nine of the committees and subcommittees, including the committees on budgetary control, internal market and consumers, economic and monetary affairs, transport and tourism, culture and education, human rights, petitions, subcommittee on security and defense, and Special Committee on the COVID-19 pandemic (European Parliament 2018).

In addition, there are women vice-chairs in all committees. The Women's Rights and Gender Equality committee stands out with four women as vice-chairs, and Employment and Social Affairs Committee and the Special Committee on Beating Cancer—with three women vice-chairs each (European Parliament 2018). All this data shows that the participation and the role of women in the work of the European Parliament has increased, but more efforts are necessary to achieve a complete balance between men and women.

Thorough analysis of the data shows that in most Member States, the gender equality balance in politics has not yet been achieved, but it should be pointed out that in some countries, a relatively small number of women participate in political life. The reasons for that are different, but the main one is that states themselves do not tolerate their participation and even directly or indirectly hinder it. As a specific obstacle to gender balance in the European Parliament, one can point to the fact that the European political groups had missed an opportunity to encourage their national parties to promote gender balance on candidate lists. Only two of the six largest European political parties mentioned gender equality in their program documents and none called specifically for the adoption of gender election quotas. The use of quotas is a rather controversial and delicate question, especially in the region of Central and Eastern Europe, where quotas were disputable owing to their use during the period of socialism. Nevertheless, in the 2019 elections, legislated quotas applied in 11 countries, namely Belgium, Greece, Spain, France, Croatia, Italy, Luxembourg, Poland, Portugal, Romania, and Slovenia (European Parliament 2018).

It should be observed that women are still significantly under-represented in decision-making positions in all fields, with an average of 33% of women's representation within

the national parliaments. This means that almost two-thirds of the members of national parliaments are still men, and the progress is rather slow and uneven.

Regarding the statistics about women's participation in different formats of the Council of the EU, it should be noted that this indicator again depends on the extent to which Member States allow women's participation in the national executive power, or to phrase it another way, whether they comply with EU gender equality strategies in the field of internal governance. Women represent, on average, 32% of senior ministers in Member State governments and only 26% of the leaders of the major political parties. According to the doctrine, women have been systematically under-represented in the Council committee system; in addition, the number of women has increased significantly over time since "women comprised 21 per cent of the negotiators in the selected committees and working groups in 2003, and 37 per cent in 2015" (Naurin and Naurin 2017). The authors consider that the committee system of the Council of the EU constitutes the core of the inter-governmental negotiation machinery in the EU system. Formally, the committees and working groups only prepare the meetings of the ministers, but in practice, the bulk of the negotiations take place in these venues. Their study shows that women are systematically under-represented in these negotiations (Naurin and Naurin 2017), the most popular pattern being to include more women in 'soft' policy areas than in 'hard' policy areas (such as defense and security policy, police, and justice cooperation, etc.). Another interesting conclusion that can be drawn is that "newer member states are significantly more likely to have a balanced gender composition among the diplomats posted in Brussels compared with the founding member states" (Naurin and Naurin 2017). As a whole, Kantola notes that at the ministerial level "the representation of women is at its lowest of the EU institutions" (Kantola 2009).

In accordance with the Gender Equality Strategy, the Commission aims to achieve gender parity at all levels of government by the end of 2024, which is obviously difficult to achieve. Supporting measures are foreseen for the increased inclusion of women in economic and political life through special training programs for the development of leadership skills. The Commission will also support Member States in developing and implementing more effective strategies to improve the gender balance through the Mutual Learning Program on Gender Equality<sup>17</sup>. It should be considered that it is sometimes important to overcome purely linguistic and interpretative differences arising between Member States and their legislations (Georgieva 2021).

The Gender Equality Strategy concludes that gender inequality is a global problem, and the EU promotes gender equality and women's empowerment in its international partnerships, political and human rights dialogues with third countries, its trade policy, and in its neighborhood and enlargement, including the equality issues in the context of accession negotiations and the stabilization and association process. Gender equality has always been the subject of cooperation and the adoption of common standards within the European Economic Area, which includes EU Member states and three EFTA states (Iceland, Liechtenstein, and Norway) into an internal market governed by the same basic rules. It should be noted that the greatest achievement with regard to gender equality in European political life has been registered in Norway since one of the three governments headed by Gro Harlem Brundtland has almost achieved parity—it consists of eight women and nine men.

<sup>17</sup> It is stated that: "In addition to the Commission actions listed above, the Commission calls for: (A) The European Parliament and the Council:

- to adopt the proposal for a Directive to improve the gender balance in management boards;
- as well as adopt measures to improve the gender balance at all levels of management and in leadership positions in their organization;

(B) Member States:

- transpose and implement the Directive on improving the gender balance on boards once adopted; as well as
- develop and implement strategies to increase the number of women in positions of responsibility in politics and policy-making".

## 6. A Brief Description of the Situation in Bulgaria

Applying the same methodology to the Member States, one can notice a similar situation. The example of Bulgaria leads to the same observation that, despite the results achieved in the gender balance, there is still a lot of work to be done in achieving gender parity. The implementation of the state policy for equality between women and men in Bulgaria is regulated in the Equality between Women and Men Act adopted in 2016. It was stated that “temporary incentive measures implemented under this act shall not constitute discrimination under the Law for protection against discrimination”. Another key programming document is the National Strategy for Promoting Gender Equality that outlines the strategic framework of the national policy for gender equality for the period 2021–2030. It upgrades the previous document with the same name for the period 2016–2020, and the first ever national strategic document in this area was adopted in 2009 and covered the period up to 2015.

New challenges, such as contemporary development, dynamic technological changes, rapid digitalization, the penetration of artificial intelligence, adaptation to a green economy, an increase in life expectancy and an ageing population, enhanced migration processes, and the consequences of pandemic situations, such as the one with the spread of COVID-19, etc., are endeavored to be taken into account (Yaneva et al. 2021). According to the Global Gender Gap Index in 2022, Bulgaria ranks 42nd among 153 countries (World Economic Forum n.d.), which definitely represents a positive move from 49th place in 2018. The latest edition of the European Institute for Gender Equality Index reports some progress for the country, with an increasing score of 60.7 percentage points compared with 56 in 2005, which ranks Bulgaria 19th within the EU (Bulgaria | Index | 2022 | Gender Equality Index | European Institute for Gender Equality (europa.eu) (n.d.)).

It should be noted that 26.5% of information and communication technology specialists in Bulgaria are women (compared with 17.2% in the EU). The share of women graduating from ICT majors in Bulgaria is nearly 30% compared with 16%, on average, for the EU. Among scientists and engineers in our country, women comprise 53% compared with 40.5%, the average European level. In Bulgaria, the share of women working in science, technology, engineering, and mathematics is the largest (11%) in the EU (compared with 28% for men). Equality between women and men in this area has the second-best score in the EU (National Strategy for Promoting Gender Equality n.d.).

At the same time, women continue to be seriously under-represented in senior management positions in politics and in business. Women’s representation in business management is still insufficient to influence the decision-making. In politics, as of July 2020, (under the last regular government), women accounted for 35% in government and 27% in parliament. The share of women ministers between 2005 and 2020 had increased from 26 to 35%. In 2020, women made up half of the deputy prime ministers in the government, and a woman is a vice-president. The share of the women representatives in municipal councils is approximately 30%. At the same time, a woman has been the mayor of the largest municipality and capital for a fourth term now. Women are the heads of the Commission for Protection against Discrimination, the Ombudsman, the Council for Electronic Media, the Bulgarian Olympic Committee, etc.

## 7. Discussion and Conclusions

The EU gender equality policy has been based on a number of different instruments. Firstly, the legal acts (treaties, directives, and case-law) have for several decades been trying to guarantee equal pay along with the equal treatment in the workplace and the labour market as well as to the access to and supply of goods and services. Any direct or indirect discrimination in social security systems was also prohibited, and the minimum requirements for parental and maternity leave have been established; the protection of pregnant workers and young mothers has been ensured, and the status of self-employed workers has been defined. The development of procedural rules provided for the inversion



of the burden of proof, recognized the possibility of affirmative action for the under-represented sex, and made harassment a form of discrimination.

The data analyzed in the article outline two trends, namely that the observance of gender equality and women's empowerment does not develop to the same extent either in the different Member States or in the European institutions, and that the different level of development in the Member States has an impact on the observance of gender equality in the institutions, which is most visible in the composition of the Council of the EU, as well as in the representation of the Member States in the Commission insofar as there are countries that have rarely, or not at all, produced female Commissioners. On the other hand, the introduction of quotas for women in the management boards of companies gives a new impetus for the promotion of women, but its real development again depends on the Member States, since they need not only to transpose the directive into their national legislations in time but also to fulfill its provisions by applying adequate measures to achieve this goal.

Undoubtedly, the COVID-19 pandemic has marked a negative impact on gender equality. It is difficult to measure the overall implications of the crisis due to the lack of comparable gender data aggregated across Member States. The COVID-19 pandemic has an unprecedented impact on the European labor market evident in the disproportionate length of working hours—women typically spend 13 hours more per week on unpaid care and housework, and 85 % of single parents are women, etc. In addition, women are at the COVID-19 frontline—out of the 49 million healthcare workers in the EU, 76% are women (Jacquot 2020). The pandemic has also affected sectors of the economy where traditionally more women have been employed, such as hospitality, nursery, and domestic work.

Another challenge could be the fact that there are clear signs that the so-called gender mainstreaming, which aims to take gender into account in all European policies, should be balanced to some extent. In its 1/19 Opinion, the CJEU does not give a clear direction to the EU to overcome the political blockage for the ratification of the Council of Europe Istanbul Convention. According to the opinion, the Council can take additional time to achieve greater political support among member states.

The future actions are likely to be connected with the further implementation of the binding and non-binding 'soft law' instruments, such as European Gender Equality Strategy, as well as the further execution of the political priority defined as 'a Union of equality'. As stated by von der Leyen: "We need equality for all and equality in all of its senses" (Von der Leyen 2019). Gender equality could certainly be a central issue for the new pillar of Social Europe with an even stronger affirmation of the importance of gender equality as part of the foundational identity of the European Union.

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## Abbreviations

CEDAW	Convention on the Elimination of All Forms of Discrimination against Women.
COVID-19	Severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).
CoE	Council of Europe.
ECB	European Central Bank.
EIGE	European Institute for Gender Equality.
EU	European Union.

IMF	International Monetary Fund.
OECD	Organization for Economic Co-operation and Development.
TEU	Treaty on the European Union, the first part of the Treaty of Lisbon, which was signed in Lisbon on 13 December 2007, and came into force on 1 December 2009. Consolidated version of the Treaty on European Union (europa.eu).
TFEU	Treaty on the Functioning of the European Union, the second part of the Treaty of Lisbon, represents the renamed 1957 Treaty establishing the European Economic Community and later Treaty establishing European Community. Consolidated version of the Treaty on the functioning of the European Union (europa.eu).
UDHR	Universal Declaration of Human Rights. Universal Declaration of Human Rights   United Nations.
UN	United Nations.
WEF_GGGR	World Economic Forum. Global Gender Gap Reports.

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