

The principle of equal pay for equal work or work of equal value in the case of workers with disabilities

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Abstract: The rights of people with disabilities in relation to working conditions and employment are protected through legislative provisions, complemented by policy initiatives at the EU level. However, the well-established principle of equal pay for equal work or work of equal value, developed in relation to women and men, has not been extended in a comparable manner to workers with disabilities. Empirical evidence shows that people with disabilities are paid less than comparable workers without disabilities. This Article examines the current EU legal framework applicable to workers with disabilities, with particular emphasis on its capacity to address the disability pay gap. It further explores the possibility of extending the principle of equal pay, beyond the ground of gender, to include workers with disabilities.

Keywords: equal pay – workers with disabilities – disability pay gap – European Union – Employment Equality Directive – UNCRPD

1. Introduction

The principle of equal pay has a prominent role within the general framework for gender equality protection in the European Union (EU). It is a fundamental principle in the EU that has been enshrined in the Treaties since the founding Treaty of Rome.¹ The protection

¹ Art.119 now Art. 157 Treaty on the Functioning of the European Union (TFEU).

of equal pay for equal work or work of equal value between women and men has since been developed through secondary legislation and extensive case law, while the complex causes of inequality made necessary the gradual complementary use of hard and soft law instruments.²

The gender equality *acquis*, including concepts such as direct and indirect discrimination, harassment and positive action, served as a basis for the Employment Equality Directive (EED) establishing a general framework for equal treatment on the grounds of, *inter alia*, disability in employment and occupation.³ Within this framework, however, the issue of equal pay for equal work or work of equal value between workers with disabilities and workers without disabilities has not been developed in a comparable manner to gender equal pay.

Empirical evidence indicates that people with disabilities are paid less than comparable workers without disabilities.⁴ These disabilities can be diverse resulting from the interaction between long-term physical, mental, intellectual or sensory impairments, which are often invisible, with barriers in the environment.⁵ In addition, intra-group differences are noted, i.e. women with disabilities face intersectional discrimination and are paid less compared to their male counterparts.⁶ The disability pay gap can only be partly explained by factors such as age, education, experience, occupation or difference in working patterns.⁷ Evidence suggests that workers with disabilities face barriers and discrimination due to stereotypes and biases concerning their productivity, which adversely affect their remuneration.⁸

Changes in the nature of work with the increasing digitalization, remote work and flexible work arrangements provide opportunities to improve access to occupations and productivity for people with disabilities.⁹ At the same time, the percentage of people with disabilities is increasing. In 2024, a Eurostat survey showed that more than nearly a quarter

² CLERIDOU, *The Impact of the EU Accession on Promoting Equal Pay and Female Voices in Cyprus*, in *Cyprus Review*, Vol. 32(1), 2020, 227.

³ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

⁴ ANANIAN, DELLAFERRERA, *A study on the employment and wage outcomes of people with disabilities*, ILO Working Paper, 2024, 124; KRUSE, SCHUR, ROGERS, AMERI, *Why Do Workers with Disabilities Earn Less? Occupational Job Requirements and Disability Discrimination*, *British Journal of Industrial Relations*, 2018, Volume 56, Issue 4, 691-887; EUROPEAN DISABILITY FORUM, *The right to work: The employment situation of people with disabilities in Europe*, European Human Rights Report, 2023, Issue 7.

⁵ Union of Equality -Strategy for the Rights of People with Disabilities 2021-2030.

⁶ ANANIAN, DELLAFERRERA, op. cit., 34.

⁷ ANANIAN, DELLAFERRERA, op. cit., 24.

⁸ LONGHI, *The disability pay gap*, Equality and Human Rights Commission, Institute for Social and Economic Research, University of Essex, 2017, 8.

⁹ EUROPEAN PARLIAMENT, *The impact of teleworking and digital work on workers and society: Special focus on surveillance and monitoring, as well as on mental health of workers*, Study Requested by the EMPL committee, 2021.

(23.9%) of the EU population aged above 16 years old reported a disability.¹⁰ Specifically, the participants reported some or severe long-standing limitations in their usual activities due to health problems (activity limitation)¹¹, corresponding to approximately 107 million people.¹²

These figures are constantly rising due to demographic ageing and increase in life expectancy.¹³ As a result, the disability pay gap will continue to affect an increasing number of people. Persistently lower income among people with disabilities increases the risk of poverty and social exclusion,¹⁴ thereby undermining broader EU objectives of social inclusion and equality.

Addressing the disability pay gap is a particular complex issue which needs to take into account issues of accessibility, inclusion and reasonable accommodation in order to avoid a backlash on the employment rates of people with disabilities.

This Article examines whether the current EU legal framework is capable of addressing the disability pay gap. It further explores the potential extension of the principle of equal pay, as developed within EU gender equality law, to workers with disabilities. Such a development would be consistent with the objectives of the Union of Equality, the UN Convention on the Rights of People with Disabilities and its Optional Protocol (UNCRPD) and the UN Sustainable Development Goals. It would also strengthen the EU's role as a global actor in combating inequalities and promoting human rights.

2. Disability pay gap

The disability pay gap is defined as the difference between the average hourly pay of people with disabilities and people without disabilities.¹⁵ Its causes are complex and include personal characteristics which differentiate people with disabilities in relation to people without disabilities.¹⁶

Lower educational attainment, for example, directly affects the earning of all workers. However, people with disabilities tend to have lower educational attainment than those

¹⁰ https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Population_with_disability#:~:text=update%3A%20December%202025.-,Highlights,women%20to%20report%20a%20disability., accessed 16/12/2025.

¹¹ *Ibidem*.

¹² <https://www.consilium.europa.eu/en/infographics/disability-eu-facts-figures/>, accessed 16/12/2025.

¹³ VANHEGEN, HENDRICKX, *Disability in EU labour law beyond non-discrimination*, in FERRI, BRODERICK (eds.), *Research Handbook on EU Disability Law*, Edgar, 2020, 146.

¹⁴ In 2024 in the EU, 28.8% of people with a disability were at risk of poverty or social exclusion, compared with 17.9% among people with no limitations, https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Disability_statistics_-_poverty_and_income_inequalities, accessed 1/6/2025.

¹⁵ LONGHI, op. cit., 4.

¹⁶ LONGHI, op. cit., viii.

without as they may face challenges in accessing inclusive education at the early stages of their lives.¹⁷ In addition, industries most likely to expose workers to occupational hazards, with a possible impact on their health and disability status, are often those that employ a large proportion of low skills labour.¹⁸ These factors contribute to the overrepresentation of workers with disabilities in elementary and low-paid occupations and their underrepresentation among managers and professionals.¹⁹

The importance of skills and qualifications for labour market inclusion has been recognised in EU policy initiatives. The Union of Equality: Strategy for the Rights of People with Disabilities 2021-2030 (European Disability Strategy) highlights that the right skills and qualifications are prerequisite for accessing and succeeding in the labour market.²⁰ It also calls on Member States (MS) to set adult learning targets for people with disabilities with a view to increasing their participation, and to ensure that national skills strategies cover their specific needs.²¹ This is also in line with the European Skills Agenda, which delivers on the European Pillar of Social Rights and notably its first principle on the right to quality and inclusive education, training and lifelong learning.²²

Nevertheless, empirical evidence suggests that differences in observable characteristics explain only a limited share of the disability pay gap. A recent ILO study on the employment and wage outcomes of people with disabilities indicates that three quarters of the disability pay gap cannot be explained by differences in terms of education, age and occupation between employees with and without disabilities.²³

Other contributing factors include the possible limitations to the productivity of people with disabilities as a result of a mismatch between their capacities and the requirements of their jobs²⁴ and trade-offs between greater job flexibility or workplace accommodations for workers with disabilities and the level of their wages.²⁵ Even after taking into account potential limitations to productivity, discrimination remains a potential factor influencing the pay of workers with disabilities.²⁶

Stereotypes concerning the perceived average ability of people with disabilities and generally negative attitudes towards people with disabilities can be a source of discrimination.²⁷

¹⁷ ANANIAN, DELLAFERRERA, op. cit., 20.

¹⁸ *Ibidem*.

¹⁹ ANANIAN, DELLAFERRERA, op. cit., 24.

²⁰ EUROPEAN COMMISSION, *Union of Equality Strategy for the Rights of People with Disabilities 2021-2030*, 12.

²¹ *Ibidem*, 13.

²² *Ibidem*.

²³ ANANIAN, DELLAFERRERA, op.cit., 24.

²⁴ Workers with disabilities may have reduced ability to work continually on a full-time basis and this can have a negative impact on pay.

²⁵ ANANIAN, DELLAFERRERA, op. cit., 24.

²⁶ *Ibidem*.

²⁷ *Ibidem*.

There are limited studies focusing on the extend of discrimination against people with disabilities, particularly in relation to pay.²⁸

The complex and dynamic causes of the disability pay gap, as analysed above, make necessary the combined use of hard and soft law measures aiming to specifically address both its structural and discriminatory dimensions.

3. The EU framework on protecting the right to equality and non-discrimination of workers with disabilities

The primary legal texts of the EU include the general principle of equality, which is a cornerstone of the EU law and policies. The Treaty on European Union (TEU) names equality as one of the common values on which the EU is founded.²⁹ The Treaty on the Functioning of the European Union (TFEU) states that in defining and implementing its policies and activities, the Union shall aim to combat discrimination on various grounds, including disability.³⁰ Article 19 TFEU provides the legal basis for taking action to combat discrimination based on, *inter alia*, disability.³¹ In addition, the Charter of Fundamental Rights of the European Union (CFR) prohibits any discrimination based on, among other grounds, discrimination³² and includes a provision on the integration of people with disabilities.³³ The above provisions establish a general framework of equality and non-discrimination for people with disabilities and they are not specific to employment. In particular, unlike the explicit provision of equal pay between men and women,³⁴ EU primary law does not expressly address equal pay for equal work or work of equal value between comparable workers with disabilities and workers without disabilities.

At the level of secondary legislation, the EED which establishes a general framework for equal treatment in employment and occupation refers expressly to workers with disabilities. Art. 3.1(c) provides that the EED applies to all people, as regards both the public and private sectors, including public bodies, in relation to employment and working conditions, including dismissals and *pay*.

Article 153 TFEU empowers the EU to set minimum requirements in relation to, *inter alia*, working conditions and, undoubtedly, pay is an important aspect of working conditions. However, Article 153(5) TFEU explicitly excludes pay from the scope of EU's actions in

²⁸ *Ibidem*.

²⁹ Article 2 TEU.

³⁰ Article 10 TFEU.

³¹ Other grounds include sexual orientation, age and religion or belief.

³² Article 21 CFR.

³³ Art. 26 CFR.

³⁴ Article 157 TFEU, Article 23 CFR.

the area of working conditions.³⁵ This exclusion has been restrictively interpreted by the Court of Justice of the EU (CJEU), which, in several cases related to non-discrimination³⁶, rejected its application to pay issues arising under EU legislation covering working end employment conditions.³⁷

The relationship between Article 3(1)(c) EED and Article 153(5) TFEU has been examined by the CJEU in *Thomas Specht and Others v Land Berlin and Bundesrepublik Deutschland*.³⁸ In this case, which concerned equal treatment regarding basic pay of civil servants dependent upon age, the CJEU held that *pay conditions* for civil servants fall within the scope of EED and that the exception under Article 153(5) TFEU does not cover just ‘any question involving any sort of link with pay’.

This reasoning was subsequently confirmed in the recent landmark judgement of the Grand Chamber of the CJEU on the Minimum Wage Directive,³⁹ where it was clarified that the prohibition under Article 153(5) TFEU applies only to cases that provide for a *direct interference in the determination of pay* and cannot be extended to any question involving any sort of link with pay. Therefore, other measures with a more indirect impact on wages remain permissible as instruments for the improvement of working conditions.⁴⁰

Accordingly, it can be argued that the application of the principle of equality to pay in respect of workers with disabilities does not per se interfere with the determination of pay. On the contrary, excluding pay from the scope of equality protections would be difficult to reconcile with the general principle of equality, which constitutes a fundamental value in the EU.

Nevertheless, the reference to pay in the EED remains significantly weaker than the explicit and well-developed principle of equal pay for equal work or work of equal value between women and men enshrined Article 157 TFEU and the Gender Equality Recast Directive⁴¹ (Recast Directive).

The difference in the wording and emphasis regarding equal pay between the EED and the Recast Directive can be explained by their different historical origins, legal bases, development and objectives.

³⁵ <https://www.eurofound.europa.eu/en/european-industrial-relations-dictionary/working-conditions>, accessed 1/6/2025.

³⁶ For example: CJEU, April 15, 2008, C-268/06, *Impact v Minister for Agriculture and Food and Others*; CJEU, June 10, 2010, Joined Cases C-395 and C-396/08, *Istituto nazionale della previdenza sociale (INPS) v. Tiziana Bruno and Massimo Pettini and Daniela Lotti and Clara Matteucci*; CJEU, September 13, 2007, C-307/05, *DeYolanda Del Cerro Alonso v Osakidetza-Servicio Vasco de Salud*.

³⁷ KILPATRICK, STEIERT, *A little learning is a dangerous thing: AG Emiliou on the Adequate Minimum Wages Directive (C-19/23, Opinion of 14 January 2025)*, EUI, Department of Law, Working Paper; 2025, 2, 7.

³⁸ CJEU, June 19, 2014, Joined Cases C-501/12 to C-506/12, C-540/12 and C-541/12.

³⁹ CJEU, November 11, 2025, C-19/23, *Kingdom of Denmark v European Parliament and Council of the European Union*.

⁴⁰ MÜLLER, SCHULTEN, *After Landmark EU Court Judgement: The EU Minimum Wages Directive Is Alive and Kicking*, <https://www.socialeurope.eu/after-landmark-eu-court-judgement-the-eu-minimum-wages-Directive-is-alive-and-kicking>, accessed 1/12/2025.

⁴¹ Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast).

Firstly, the principle that women and men should receive equal pay for equal work was introduced under Art. 119 (now Art. 157 TFEU) into the founding Treaty of Rome (ToR) establishing the European Economic Community in 1957. Art. 119 was included at the insistence of France in order to serve economic considerations and to stop social dumping.⁴² Nevertheless, it was included as part of the ‘social policy’ chapter and the original emphasis on economic considerations was gradually replaced by concerns for equality as a fundamental right.⁴³

The interplay of different factors including women’s activism, a remarkable judicial activism by the CJEU,⁴⁴ developments regarding gender equality at the international level, the increasing roles of the European Commission, the social partners and broader civil society, contributed to the development of gender equality law.⁴⁵ Changes in decision-making procedures have also been important for this development. In particular, legislation under Article 157 TFEU⁴⁶ is adopted using the ordinary legislative procedure, which places the European Parliament (EP) on an equal footing with the Council in the legislative process.⁴⁷ Gender equality law, especially in relation to pay, is now regarded as one of the most highly developed EU social policy areas.⁴⁸ At the level of secondary legislation, the principle of equal pay for equal work or work of equal value between women and men is enshrined in the Recast Gender Equality Directive (2006/54/EC).⁴⁹

On the other hand, the legal basis for the adoption of EED was Art. 13 TEC (now Art.19 TFEU), which is subject to the special legislative procedure requiring unanimity in the Council for the adoption of measures to combat discrimination based on, inter alia, disability. The requirement for unanimity has had significant implications for the legislative process⁵⁰ as it necessitates more compromises between the MS, often resulting in watered

⁴² BARNARD, *EU Employment law*, 4th edition, Oxford University Press, 2012, 254.

⁴³ BAIN, MASSELOT, *Gender Equality and identity building for Europe*, in *Canterbury Law Review*, 2012, 18, 103.

⁴⁴ Starting with the Defrenne cases (Case 43/75 *Defrenne v SABENA* (No 2) [1976] ECR 455 and Case 149/77 *Defrenne v SABENA* (No.3) [1978] ECR 1365) and also case C-50/96 *Deutsche Telekom AG v Lili Schröder* [2000] ECR I-743, para 56 and 57, where the CJEU reaffirmed that ‘the right not to be discriminated against on grounds of sex is one of the fundamental rights whose observance the Court has a duty to ensure’.

⁴⁵ CLERIDOU, *Female voices in hard and soft law: the case of equal pay in Cyprus*, PhD Thesis, University of Bristol, 2017.

⁴⁶ According to Article 157 (3) TFEU: “The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, and after consulting the Economic and Social Committee, shall adopt measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, including the principle of equal pay for equal work or work of equal value.”

⁴⁷ <https://www.europarl.europa.eu/olp/en/ordinary-legislative-procedure/overview> , accessed 2/6/2025.

⁴⁸ BAIN, MASSELOT, op. cit., 102.

⁴⁹ Directive 2006/54/EC brought together and consolidated in a single text the Directives on equal pay (Equal Pay Directive 75/117/EEC), equal treatment in employment (Equal Treatment Directive 76/207 as amended by ETD 2002/73); equal treatment in occupational security schemes (Social Security Directive 86/378/ECC as amended by SSD 96/97) and the burden of proof (Burden of Proof Directive 97/80/EC, as amended by Directive 98/52/EC).

⁵⁰ EUROPEAN PARLIAMENT, *Proposal for a horizontal equal treatment Directive: Complementary impact assessment*, 2025, 22.

down provisions and even difficulties in achieving unanimity.⁵¹ Moreover, the role of the EP, which is traditionally an important actor protecting and promoting equality, is limited to consent only.

Secondly, the wording and structure of the EED was based on gender equality legislation, in a similar manner as the Racial Equality Directive⁵² adopted during the same time. However, the EED is limited to employment and occupation, whereas both gender equality and racial equality legislation extend beyond employment. Also, unlike the Recast Gender Equality Directive and the Racial Equality Directive, there is no provision in the EED for the establishment of a specialised equality body responsible for monitoring and enforcement. a monitoring equality body.

Thirdly, in relation to people with disabilities, the EED focuses on providing equal opportunities and equal access to paid employment in order to enable individuals to achieve personal autonomy and social integration. This emphasis on employment participation (including retaining people with disabilities in employment) is evident by provisions requiring reasonable accommodation of their needs at the workplace as a means to combat discrimination on the grounds of disability.⁵³ The EED also provides for positive action to prevent or compensate for disadvantages linked with disabilities and recognises the right of MS to maintain or adopt measures for the protection of health and safety at work, as well as provisions or facilities for safeguarding or promoting the integration of people with disabilities into the working environment.⁵⁴

Indeed, research has shown that a high employment gap exists between people with and without disabilities.⁵⁵ The European Disability Strategy which complements the legislative framework, highlights that people with disabilities have a lower employment rate, are disproportionately affected by unemployment, and leave labour markets earlier (para 4.3.). The Strategy calls on MS to establish, by 2024, targets for increasing the employment rate of people with disabilities and reducing employment rate gaps between people with and

⁵¹ The lack of unanimity issue is evident in the case of the proposed Directive on implementing the principle of equal treatment outside the labour market irrespective of age, disability, sexual orientation or religious belief ('horizontal anti-discrimination Directive'), which was stalled in the Council since 2008.

⁵² Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between people irrespective of racial or ethnic origin.

⁵³ Art. 5 Directive 2000/78/EC: "In order to guarantee compliance with the principle of equal treatment in relation to people with disabilities, reasonable accommodation shall be provided. This means that employers shall take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer. This burden shall not be disproportionate when it is sufficiently remedied by measures existing within the framework of the disability policy of the Member State concerned."

⁵⁴ Article 7 ETD.

⁵⁵ ANANIAN, DELLAFERRERA, *op. cit.*, 7.

without disabilities to help achieve the 2030 headline employment target proposed in the Action Plan to implement the European Pillar of Social Rights.⁵⁶

As part of the European Disability Strategy, the European Commission has also developed the Disability Employment Package to support MS in promoting social inclusion and economic autonomy of people with disabilities through employment.⁵⁷ In addition, the 2025 European Semester Employment Guidelines emphasize that the potential of people with disabilities to contribute to economic growth and social development should be further realised, in line with the European Disability Strategy.⁵⁸

A legislative and policy framework promoting the active inclusion and full participation of workers with disabilities is important because health problems and disabilities are significant reasons for early exits from the labour force.⁵⁹ However, such an approach should not be pursued at the expense of equality in relation to pay and, ultimately, substantive equality.

4. Impact of international developments

Developments in the field of international human rights law since the adoption of the EED have had a direct impact on the EU *acquis* and on related policies regarding the rights of people with disabilities. These developments provide a strong normative and interpretative support for extending the principle of equal pay to workers with disabilities in a more structured and explicit manner.

The adoption of the UN Convention on the Rights of People with Disabilities and its Optional Protocol (UNCRPD) has been an important milestone regarding the protection of people with disabilities and their rights to equality and non-discrimination.⁶⁰

The ratification of the UNCRPD by the EU and all its MS had a direct impact on EU legislation regarding the rights of people with disabilities. According to Article 216(2) TFEU, international agreements concluded by the EU are binding upon the institutions of the EU and on its MS. The CJEU has held that the UNCRPD forms an integral part of the European

⁵⁶ At least 78% of the population aged 20 to 64 should be in employment by 2030.

Principle 17 of the Pillar underlines that people with disabilities have the right to income support that ensures living in dignity, services that enable them to participate in the labour market and in society, and a work environment adapted to their needs.

⁵⁷ https://employment-social-affairs.ec.europa.eu/policies-and-activities/eu-employment-policies/disability-employment-package_en, accessed 1/6/2025.

⁵⁸ COM(2025) 230 final, Brussels, 4.6.2025.

⁵⁹ VANHEGEN, HENDRICKX, op. cit., 146.

⁶⁰ MORENO, *Wage Discrimination Against Women with Disabilities: Myth or Reality?*, in KOVAČEVIĆ, VUJADINOVIĆ, EVOLA (eds.), *Intersectional Discrimination of Women and Girls with Disabilities and Means of Their Empowerment*, University of Belgrade, Serbia, 2022, 430.

Union legal order.⁶¹ Consequently, provisions of secondary EU legislation must, so far as is possible, be interpreted in a manner consistent with the EU's obligations under international law.⁶²

An example of such consistent interpretation concerns the concept of “disability” under the EED, which does not include a definition of this concept. Prior to the EU's ratification of the UNCRPD a definition was developed by the CJEU in the case *Chacón Navas*.⁶³ According to that judgement, the concept of disability refers to a ‘limitation which results in particular from physical, mental or psychological impairments and which hinders the participation of the person concerned in professional life’. It must also be probable that it will last for a long time.⁶⁴

Article 1 of the UNCRPD reflects the social model of disability and explicitly defines people with disabilities as those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others. Further, the preamble states that the concept of disability must be understood dynamically and that the understanding of disability is constantly evolving.

The CJEU was called upon to clarify the definition of the concept of disability in a manner consistent with the UNCRPD. Accordingly, the CJEU has interpreted the concept of “disability” dynamically to include conditions caused by an illness medically diagnosed as curable or incurable where that illness entails a limitation which results in particular from physical, mental or psychological impairments which in interaction with various barriers may hinder the full and effective participation of the person concerned in professional life on an equal basis with other workers, and the limitation is a long-term one.⁶⁵ In doing so, the CJEU expanded the definition of disability developed by its earlier case law and the UNCRPD, so as to also include illness which entails a long-term limitation.

The possibility of a dynamic and evolving interpretation of the concept of disability by the CJEU as envisaged in the UNCRPD, is important because disability as a ground for discrimination is harder to explore in comparison to other protected characteristics. It is more variable than, for example, gender or ethnicity, which in general are determined upon birth.⁶⁶ Disability can occur upon birth or later in life.⁶⁷ A growing older population in the EU means that disabilities may appear later in life. In addition, a disability can include

⁶¹ Joined cases C-335/11 and C-337/11, *HK Danmark*, acting on behalf of *Jette Ring v Dansk Almenlystigt Boligselskab (DAB)* and *HK Danmark*, acting on behalf of *Lone Skouboe Werge v Dansk Arbejdsgiverforening*, acting on behalf of *Pro Display A/S*, in liquidation. para 30.

⁶² *Ibidem* para 29.

⁶³ CJEU, July 11, 2006, Case C-13/05, *Sonia Chacón Navas v Eures Colectividades SA*.

⁶⁴ Joined cases C-335/11 and C-337/11.

⁶⁵ Joined cases C-335/11 and C-337/11.

⁶⁶ LONGHI, op. cit., 11.

⁶⁷ LONGHI, op. cit., 10.

a physical, mental or other impairment (including neurological disorders, mental illness, learning difficulties),⁶⁸ which may also differ in severity. Disability may appear suddenly, or improve or worsen over time⁶⁹ and can be ‘activity-limiting’ and ‘work-limiting’ or both.⁷⁰ The UNCPRD makes specific reference to the rights of people with disabilities in the area of work and employment and the protection of the right of people with disabilities to equal pay for work of equal value. In particular, Article 27.1 (b) requires State Parties to protect the rights of people with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and *equal remuneration for work of equal value*.

Furthermore, the UN 2030 Agenda for Sustainable Development sets a goal to achieve by 2030 full and productive employment and decent work for all women and men, including for young people and people with disabilities, and *equal pay for work of equal value* (goal 8.5).

In light of these international developments, it can be argued that the EED should, as far as possible, be interpreted in a way that ensures effective protection of the right of people with disabilities to equal remuneration for work of equal value, in line with the EU’s obligations under the UNCPRD and the objectives of the UN 2030 Agenda for Sustainable Development.

5. Recent developments at the EU level. Minimum Wage Directive

The Directive on adequate minimum wages in the EU⁷¹ (Minimum Wage Directive) establishes a framework for adequate minimum wages with the aim of achieving decent living and working conditions, promoting collective bargaining on wage-setting and enhancing workers’ effective access to minimum wage protection.⁷²

Although the Minimum Wage Directive does not directly regulate pay or equal pay, it is nevertheless relevant to the principle of equal remuneration for work of equal value in relation to workers with disabilities, as enshrined in Article 27(1)(b) of the UNCPRD. This link is explicitly acknowledged⁷³ in the preamble of the Minimum Wage Directive, which recognises that people with disabilities, among other groups such as women and

⁶⁸ LONGHI, op. cit., ix.

⁶⁹ LONGHI, op. cit., 11.

⁷⁰ LONGHI, op. cit., 5.

⁷¹ Directive (EU) 2022/2041 of the European Parliament and of the Council of 19 October 2022 on adequate minimum wages in the European Union.

⁷² <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=legissum:4623532>, accessed 1/6/2025.

⁷³ Recital 15 Minimum Wage Directive.

younger workers, and in particular people who suffer from multiple forms of discrimination, still have a higher probability of being minimum wage or low wage earners than other groups.⁷⁴ It is also acknowledged that even in MS where workers, including people with disabilities, are covered by minimum wage provisions, there is no compliance and they can still receive a lower remuneration than the statutory minimum wage.⁷⁵ Such non-compliance affects particularly, among others, people with disabilities.⁷⁶ Therefore, by establishing a framework for adequate minimum wages and improving workers' effective access to minimum wage protection, the Minimum Wage Directive has the potential of positively contributing towards reducing the disability pay gap, at least for workers who are covered by minimum wage protection.

5.1. Pay Transparency Directive

The Directive aiming to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms (Pay Transparency Directive)⁷⁷ introduced mechanisms which are important and can have a significant impact in relation to equal pay for workers with disabilities.

These mechanisms include access to information during the employment relationship and before its commencement, reporting obligations of companies and stronger enforcement of the right to equal pay. Consequently, there is an increased visibility of the principle of gender equal pay which can provide 'leverage' to extend the principle of equal pay beyond the ground of gender, so as to include workers with disabilities. In addition, these mechanisms can be potentially used as a basis in order to introduce similar measures to combat pay discrimination based on disability.

Further, the Pay Transparency Directive explicitly recognises intersectional discrimination, which is discrimination based on a combination of sex and any other ground or grounds of discrimination protected under the EED or the Racial Equality Directive such as age, disability and ethnicity. Employers are not obliged to gather data related to protected grounds other than sex. However, in the context of gender-based pay discrimination any situation of disadvantage arising from intersectional discrimination can be taken into account 'in particular for substantive and procedural purposes, including to recognise the existence of

⁷⁴ Recital 10 Minimum Wage Directive.

⁷⁵ Recital 14 Minimum Wage Directive.

⁷⁶ Recital 14 Minimum Wage Directive.

⁷⁷ Directive (EU) 2023/970 of the European Parliament and of the Council of 10 May 2023 to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms.

discrimination, to decide on the appropriate comparator, to assess the proportionality, and to determine, where relevant, the level of compensation awarded or penalties imposed⁷⁸. This recognition brings the gender equal pay framework closer to the context of disability because in cases of intersectional discrimination based on gender and disability (and even on other additional grounds such as age or ethnicity) the equal pay principle, as developed in relation to gender, will apply to female workers with disability.

6. Conclusion

The purpose of the Article was to examine whether the current EU legal framework in relation to workers with disabilities is capable of addressing the disability pay gap. The analysis demonstrated that the Employment Equality Directive explicitly applies to workers with disabilities and to equal treatment in relation *pay conditions*.

However, the existing framework is focused on increasing the labour-market participation of people with disabilities and remains significantly less developed in comparison to gender equality legislation. Yet pay is one of the most important elements of the employment relationship. Promoting the employment of people with disabilities without ensuring equal pay for equal work or work of equal value is incompatible with substantive equality.

Constructive and dynamic interpretation of EU law by the CJEU, informed by the UNCRPD, could potentially extend the principle of equal pay beyond the ground of gender in order to include workers with disabilities. Moreover, recent developments at the EU level, such as the adoption of the Minimum Wage Directive and the Pay Transparency Directive, which include explicit references to workers with disabilities, can have an impact on narrowing the disability pay gap and provide leverage for further developments.

An equal pay principle that is not confined to a specific protected characteristic can represent a manifestation of the general principle of equality and this should be explicitly reflected in the legislative and policy framework regarding workers with disabilities. Such a development would be in line with the goal of a Union of Equality, support the achievement of the UN Sustainable Development Goals and strengthen the EU's global role in combating inequalities and promoting human rights.

⁷⁸ Recital 25 Pay Transparency Directive.

