

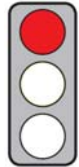
# STRATEGY FOR EQUALITY BETWEEN WOMEN AND MEN 2010–2015

Status: 13 December 2010

## MAIN ISSUES

**Objective of the Communication:** The Commission outlines its planned strategy for equality between women and men.

**Parties Affected:** All citizens, including males; companies.



**Pro:** The Commission largely dispenses with legislative measures.

**Cons:** (1) The Commission completely ignores the fact that there may actually be rational reasons for the unequal treatment of women and men.

(2) The call for a women quota in top-level positions and for equal remuneration for “equal work and work of equal value” is mere political ideology.

(3) A general EU-wide criminal law protecting women against violence ignores reality and infringes the allocation of competences in the EU.

## CONTENT

### Title

**Communication COM(2010) 491** of 21 September 2010: **Strategy for equality between women and men 2010–2015**

### Brief Summary

#### ► Background

- In the “Women’s Charter” [Communication [COM\(2010\) 78](#) of March 2010], the Commission renewed its commitment to gender equality and promised to strengthen the gender perspective in all its policies. Moreover, it mentioned five priority areas:
  - equal “economic independence”,
  - equal pay for “equal work and work of equal value”,
  - equality in “decision-making”,
  - protection of dignity and integrity,
  - “gender equality in external actions”.
- Within the Communication on the strategy for equality the Commission describes key actions for the areas listed above and for a further area addressing “horizontal issues”. With the key actions the Commission wishes to stimulate change and progress in gender equality.
- In addition to the key actions, the Commission has published a catalogue of more than 130 non-legislative measures for each single area in a separate Working Document [[SEC\(2010\) 1079](#)].

#### ► Horizontal issues

- The Commission promotes “non-discriminatory gender roles in all areas of life” in order to ensure equal development opportunities.
- The existing legal framework regarding the prohibition of discrimination based on gender requires “monitoring, enforcement, regular evaluation and updating”. To this end, the Commission has commissioned a comprehensive “study on the functioning of equality bodies” across all Member States and calls for “the aggravated consequences of discrimination on two or more grounds” to be addressed.
- The Commission wishes to institute a “top-level Gender Equality Dialogue” between the European Parliament, the Council presidencies, the European social partners and representatives of the civil society.
- Key actions: the Commission will
  - develop equality indicators together with the European Institute for Gender Equality,
  - assess how men can contribute to gender equality,
  - monitor the implementation of the anti-discrimination directives and
  - draw up an annual report on the progress made in gender equality, which should form the basis for the top-level Gender Equality Dialogue.

► **“Equal economic independence”**

- The Commission believes that an increase in the employment rate of older women, single parents, women with a disability, migrant women and women from ethnic minorities is a key priority. For the possibility to earn a living on their own enables women to gain economic independence. To this end, the Commission wishes to improve the work-life balance.
- Key actions: the Commission will
  - examine which differences exist between Member States regarding the rules for family-related leave and how to remove them,
  - assess the progress made by Member States in improving childcare facilities,
  - promote gender equality in all flagship initiatives for implementing the Europe 2020 strategy [COM(2010) 2020; cp. [CEP Policy Brief](#)] through the Structural funds and other “major” funding programmes (e.g. the 7<sup>th</sup> Framework Programme for Research),
  - “promote female entrepreneurship and self-employment” and
  - promote gender equality in the immigration and integration process of migrants from third-countries.

► **Equal pay for “equal work and work of equal value”**

- The Commission criticizes the fact that considerable gender pay gaps exist although the equal pay for equal work principle is enshrined in the EU Treaties.
- Moreover, it demands that more attention be paid to the professional development of women.
- Key actions: the Commission will
  - support employers’ equal pay initiatives at the workplace,
  - in cooperation with the European social partners at EU level, explore ways to improve the transparency of pay,
  - examine the impact on equal pay of alternative contractual arrangements such as part-time work and fixed-term contracts,
  - introduce a “European equal pay day” and
  - encourage women to enter “non-traditional” professions.

► **Equality in “decision-making”**

- The Commission criticises the fact that the proportion of women in decision-making positions in the economy, politics and research is too low, although women make up nearly half the workforce and more than half of university graduates are women.
- Key actions: the Commission will
  - “consider targeted initiatives to improve the gender balance in decision-making”,
  - “monitor the 25% target for women in top-level decision-making positions in research”,
  - comply with gender quota in “committees and expert groups established by the Commission” and
  - “promote” a greater participation by women in European Parliament elections, including as candidates.

► **Protection of dignity and integrity**

- The Commission calls for
  - the combating of violence against women,
  - the removal of “gender-based inequalities” in health care and long-term care,
  - the tackling of “gender related issues in the area of asylum”,
  - the implementation of the “Stockholm Programme” whose purpose it is to further develop the area of “freedom, safety and justice” (European area of justice), including migration, legal and police cooperation in criminal cases as well as fundamental rights [Communication COM(2010) 171; see [CEP Policy Brief](#)],
- Key actions: the Commission will
  - “adopt an EU-wide strategy on combating violence against women” and monitor its implementation, including the harmonisation of criminal law,
  - eliminate discriminatory elements in EU asylum instruments and
  - draw up a “Women’s Health Report” (announced for 2010) after the Men’s Health Report has been published.

► **“Gender equality in external actions”**

- Gender equality should be:
  - a prerequisite for EU accession talks with EU candidate countries.
  - subject matter for general external actions with third-countries, e.g. in the European Neighbourhood Policy (ENP) and development policy and
  - subject matter of co-operations with international organisations, such as UN WOMEN and in the field of humanitarian aid and conflict prevention.

- Key actions: the Commission will
  - in accession negotiations with “Western Balkan countries” and Turkey insist on the principle of equality between women and men,
  - “implement the EU Plan of Action Gender Equality and Women’s Empowerment in Development (2010–2015)”,
  - use the possibilities that ENP offers “to promote gender equality” and
  - further integrate gender considerations into EU humanitarian aid.

### Statement on Subsidiarity by the Commission

The Commission does not address any questions of subsidiarity.

### Policy Background

The principle of equality between women and men is rooted in the international Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) established by the United Nations; it took effect on 3 September 1981.

At European level, the efforts to establish gender equality are based on the Communication “Towards a community framework strategy on gender equality (2001 – 2005)” [Communication COM(2000) 335] and the follow-up Communication “A Roadmap for equality between women and men 2006 – 2010” [Communication COM(2006) 92]. Most recently, the Commission renewed its commitment to equality in the “Women’s Charter” [Communication [COM\(2010\) 78](#)] in which it promises to further integrate the gender perspective into all its policies.

### Options for Influencing the Political Process

Leading Directorate General:

DG Employment, Social Affairs and Equality Opportunities

Consultation procedure:

There is no consultation procedure scheduled.

## ASSESSMENT

### Economic Impact Assessment

#### Ordoliberal Assessment

The principle of equality between women and men corresponds to the general view of society in all Member States which, amongst other things, is characterised by basic values and constitutional basic rights. However, if equality is to be taken seriously, then the reverse conclusion would also require an unequal treatment of unequal individuals. **The Commission seems to ignore the fact that there may be rational reasons for the unequal treatment of women and men.**

The call for “equal economic independence” for women and men doesn’t actually mean much, as such independence does not exist for anyone. Basically, the Commission is simply using this to achieve its goal of an increase in the employment rate of women. There is nothing to be said against an increased employment rate; however, **decisions about one’s own employment should** – irrespective of the availability of child care – **be made** by the women or family concerned **without any regulatory interference through politics.**

**The Commission’s demand for equal pay for “equal work and work of equal value” is mere political ideology.** For the Commission completely fails to explain what exactly it means by “equal work and work of equal value”. The competition for a scarce workforce automatically provides for equal pay for equal productivity and for unequal pay for unequal productivity. On a competitive labour market, unequal pay reflects unequal productivity, which can possibly be explained by differences in working times, professional experience, educational benefits and preferences by men and women. If these correlations are ignored, unemployment is created among the group privileged by too high remuneration. Furthermore, in light of the increasing scarcity of skilled workers, employers cannot afford to neglect the potential of female workers by offering wages that are too low, thereby even risking their disaffection. Hence, there is no need for policy action (cp.: [IAB-Research Report 4/2009](#) – IAB: *German Institute for Labour and Employment Research*, in German).

**The demand for “equality in decision-making”** – by which the Commission means the women’s quota in decision-making positions – **is also motivated politically and ideologically.** From an ordoliberal standpoint, it cannot be justified. In every profession the principle is that the most suitable worker should be employed. **A women’s quota would** go against this principle and, in particular, **not take account of industry-specific segregation** – i.e. the different career choice behaviour of men and women. For even in business branches with a significant under-representation of female workers, a women’s quota leads to a disproportionately high number of women in top-level positions. **Moreover, there is a risk that in such business branches** – for lack of choice – **also women who are not sufficiently qualified would enter top-level positions.** **The protection of women’s dignity and integrity is** already reality in Member States and **manifested in national penal codes.** The gender-neutral access to health care and long-term care is ensured by the existing legal framework and ECJ’s case law. **There is no need for further EU action.**

The demand for an integration of the principle of equality into external EU action is legitimate. This applies in particular to EU accession negotiations with countries that do not have as distinct a canon of values as in the EU and its Member States.

## Legal Assessment

### Legislative Competence

The implementation of the demand for equality and for combating unequal treatment can be based in particular on Art. 19 TFEU. It grants comprehensive powers to the EU regarding the adoption of measures to combat “discrimination based on sex”.

As regards socio-political measures, there are two special legislative competences possible: Art. 153 (2) lit. b TFEU in conjunction with Art. 153 (1) lit. i TFEU empowers the EU to adopt directives serving to establish “equality between men and women with regard to labour market opportunities and treatment at work”. Art. 157 (3) TFEU empowers the EU to adopt “measures to ensure the application of the principle to equal opportunities and equal treatment of men and women in matters of employment and occupation, including the principle of equal pay for equal work of equal value”. To this end, the Commission’s plans are covered by the allocation of powers in the EU.

**However, general EU-wide harmonised rules in criminal law in order to combat violence against women infringe the allocation of EU powers.** Although Art. 83 (1) TFEU empowers the EU to define crimes, this power is restricted to special crimes such as terrorism, organised crime, human trafficking and sexual exploitation of women and children –each under the precondition that they have cross-border impacts. Hence, only the last area would allow for European harmonisation.

The Commission regularly invokes the Charter of Fundamental Rights of the European Union (CFREU) in order to justify the necessity for EU action: Article 23 CFREU obliges the EU “to ensure equality between men and women [...] in all areas, including employment work and pay”. However, the Charter of Fundamental Rights cannot serve as a basis for legislative competences (Art. 51 (2) CFREU).

### Subsidiarity

It is not comprehensible which cross-border problems that different national rules on family-related leave pose might justify EU action. Combating violence against women is a task that requires state action. Therefore, all Member States’ penal codes already penalise acts against physical integrity and acts violating sexual self determination. European rules would not provide any added value compared to national actions.

### Proportionality

In view of the existing multitude of different EU rules on equality between men and women and the resulting case law of the ECJ, new EU rules are not necessary.

## Conclusion

The Communication is not exactly helpful. The Commission completely ignores the fact that inequality between women and men may actually have rational reasons. Nor should it try to influence the decisions of women living in families as to whether or not they want to work. The calls for a women’s quota and for equal pay for “equal work and work of equal value” are motivated by political ideology. The competition for a scarce workforce already leads to equal pay for equal productivity. Politically regulated remuneration which is higher than market wages creates unemployment among the allegedly privileged group. The EU is not empowered to establish any EU criminal law protecting women against violence. Besides, it is superfluous anyway, as national penal codes already cover this area.