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# Different Gender Priorities Amid EU Labor Laws and Practice

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## ABSTRACT

*Labor laws aim to accomplish a number of goals, including achieving gender equality in the workforce, to offer a minimum standard of living. The majority of academics, however, ignore other sexually inclined individuals like LGBTI in favor of accounting only for interactions between men and women to comprehend gender in its entirety. To close that disparity, this research used a comparative approach and a qualitative approach to investigate how the EU handles the issues of a varied labor force in terms of both law and physics. The EU, in contrast to other organizations, often gives its member states guidance by providing a range of consistent legal support. Based on secondary research, especially recent studies funded and supervised by the EU, this study found that although the EU has a comprehensive legislative measure to maintain women's labor rights, no unique legal structure has been formed that promotes LGBTI workplace rights. Because of this, most members of sexual minorities face discrimination at work and have trouble getting employment. The slow progress to reduce pay inequalities, pension disparities, and other forms of discrimination between binary and non-binary genders has revealed shortcomings in the current legal framework, even in the face of sufficient legal protections. The findings of this study have supported the implementation of regulations aimed at reducing gender-based wage and pension inequality as well as other forms of discrimination.*

**Keywords:** *Gender needs, labor law, employment, LGBTI, Discrimination*



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## INTRODUCTION

Following WWII, the European Union (EU) acquired prominence as a regional development organization due to its enormous influence on the socio-political and economic growth of its member states. The EU has been successful in recent decades in elevating its member states to the top of the human development index (HDI) maintained by the United Nations Development Program (UNDP). Several scholars like Moravcsik (2009) believed that the uniform legal frameworks are the primary driving wheel of the EU which secures all people's rights of all member states.<sup>1</sup> For instance, the EU's Charter of Fundamental Rights (EUCFR) declared on 7th December 2000 at the Nice summit and come in force along with the Treaty of Lisbon on 1st December 2009, is one of such legislative structures which guide and try to ensure personal freedoms and rights to all EU citizens.<sup>2</sup> Such legislative structure also tries to secure a non-discriminatory working environment as well as social protection within its member states.

However, in the first quarter of the twenty-first century, on the one hand, most countries along with EU member states have been able to solve the challenge of gender equality in terms of binary-sexual opposition. On the other hand, a new struggle flagging on nonbinary-sexual opposition has been growing in most of the countries of the world. Consequently, whereas earlier gender right

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<sup>1</sup> Moravcsik, Andrew. 2009. Europe: The quiet superpower. *French politics* 7(3): 403-422 <https://doi.org/doi.org/10.1057/fp.2009.29>.

<sup>2</sup> Bercusson, Brian., Thomas Blanke, and Niklas Bruun. 2006. *European labour law and the EU Charter of Fundamental Rights*. Nomos Baden-Baden.

specialists<sup>3</sup> have stressed out to protect women's rights in society, now scholars<sup>4</sup> direction has turned into beyond the women issues.

The direction of such gender studies has given birth to different new challenges to the global legislators and policymakers, as the integration and social protection of nonbinary genders such as lesbian, gay, bisexual, transgender, and intersex (LGBTI) people to mainstream people, to formulate different policies and legislations. For instance, in 1951 the International Labour Organization's (ILO) convention on equal payment where clear binary words like 'Men and Women' have used to uphold same value in the 1st Article<sup>5</sup> but, in 2017 through a direct Request (CEACR) which have published in 2018 of 107th International Labour Conference (ILC) session where some new clauses mere a clear statement on the prohibition of discrimination based on sex (Article 1.1.a) and equality of opportunity and treatment irrespective of disability, sexual orientation, and gender identity (Article 2) have been added to the convention of 1958 (No. 111) on discrimination of employment and occupation.

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<sup>3</sup> Allen, A Dale. 1970. What to Do About Sex Discrimination. *Labour Law Journal* 21(9): 563; Baker, Elizabeth Faulkner. Protective labour legislation with special reference to women in the state of New York. Columbia University Press. 1969. <https://doi.org/10.7312/bake92444>; A. Barlow, Frank. 1944 Proper placement of women in industry.. *Journal of the American Medical Association* 124(11):687-691; J. Fisher, Marguerite. 1951. Equal-pay-for-equal-work legislation. *LJ 2 Lab* 578; H. Kronenberg, Milton. 1944. Working conditions for female employees. *Journal of the American Medical Association* 124(11): 677-683; Murray, Pauli., and Mary O. Eastwood. 1965. Jane Crow and the law: Sex discrimination and Title VII. *The George Washington Law Review* 34:232.

<sup>4</sup> Aksoy, Cevat G., Christopher S. Carpenter, Ralph De Haas, and Kevin D. Tran. 2020. Do laws shape attitudes? Evidence from same-sex relationship recognition policies in Europe. *European Economic Review*, 124:103399. <https://doi.org/10.1016/j.euroecorev.2020.103399>; Biblarz, Timothy J and Evren Savci. 2010. Lesbian, gay, bisexual, and transgender families. *Journal of Marriage* 72(3): 480-497, <https://doi.org/10.1111/j.1741-3737.2010.00714.x>; Johnson, García., Carolina Pía, and Kathleen Otto. 2019. Better Together: A Model for Women and LGBTI Equality in the Workplace [Conceptual Analysis]. *Frontiers in Psychology*, 10: 1-17. <https://doi.org/10.3389/fpsyg.2019.00272>; J. Mitchell, Kimberly., Michele L. Ybarra, and Josephine D. Korchmaros. 2014. Sexual harassment among adolescents of different sexual orientations and gender identities. *Child abuse neglect* 38(2): 280-295; Weichselbaumer, Doris. 2003. Sexual orientation discrimination in hiring. *Labour economics* 10(6):629-642. [https://doi.org/10.1016/S0927-5371\(03\)00074-5](https://doi.org/10.1016/S0927-5371(03)00074-5); Tekle, Tzehainesh. 2018. *Equal Remuneration Convention, 1951.(No. 100)*.

<sup>5</sup> Tekle, Tzehainesh. 2018. *Equal Remuneration Convention 1951(No. 100)*.

Thereafter, critical examination of existing legal frameworks becomes a trend of legal scholarship to guide legislators as well as policymakers through presenting current legal instruments' strengths and weaknesses to combat growing challenges.

The example of this perspective can be found in the study of Tekle (2018)<sup>6</sup> and Bernstein (2018)<sup>7</sup> where the researchers have explored the potential legal and political challenges for same-sex marriage and its immediate impact on family laws. To understand these complex heteronormativity Bernstein (2018) have highlighted three conceptual tools such as the assimilationist dilemma, discursive integration and co-optation, and truth regime to guide future researchers. Similarly, the importance of LGBTI people's social inclusion in employment sector like the women also highlighted in other literatures. For instance, Matthews (2020) highlighted the controversy on creating scope of involvement in public services by non-binary genders become a new challenge for the legislators to manage public finance and occupations.<sup>8</sup>

If the majority of the society is not liberal then ensuring equal rights to LGBTI become more critical. Sometimes, legislators had to follow back and instead of expanding the rights, they minimize it. Hungary can be such a witness of this statement where a change of 'sex at birth' has constitutionally become prohibited by Article 33.<sup>9</sup> Like Hungary, some other European countries such as Armenia,

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<sup>6</sup> Bernstein, Mary. 2018. Same-Sex Marriage and the Assimilationist Dilemma: A Research Agenda on Marriage Equality and the Future of LGBTI Activism, Politics, Communities, and Identities. *Journal of Homosexuality* 65(14) :1941-1956. <https://doi.org/10.1080/00918369.2017.1423211>.

<sup>7</sup> W. Daum, Courtenay. 2020. Social Equity, Homonormativity, and Equality: An Intersectional Critique of the Administration of Marriage Equality and Opportunities for LGBTI Social Justice. *Administrative Theory & Praxis*. 42(2):115-132. <https://doi.org/10.1080/10841806.2019.1659044>.

<sup>8</sup> Matthews, Peter. 2020. Debate: LGBTI rights in public services—a battle won? *Public Money & Management*, 40(6): 423-425. <https://doi.org/10.1080/09540962.2019.1676546>.

<sup>9</sup> Hatter Society, Art 33. *Legal gender recognition*. October 21, 2022. ([en.hatter.hu](http://en.hatter.hu)) <<https://en.hatter.hu/what-we-do/legal-aid/significant-cases/article-33>> accessed 21 October 2022

Belarus, Bulgaria, Croatia, Georgia, Latvia, Lithuania, Moldova, Montenegro, Poland, Russia, Serbia, Slovakia, and Ukraine also do not open for non-binary genders. Since most of these countries are the member state of the EU and the EU generally recognized as the best cooperative organization in terms of ensuring equal human rights in its member states so a question may call upon in mind that is how different gender needs have been secured in the laws, even in the employment perspective.

Undoubtedly, equal rights in occupation, as well as labour force, is one of the basic human rights. As it has been stated in the earlier discussion, over the past few decades ensuring a non-discriminatory working environment based on different sexual orientation not only challenges the existing structure but also produce confusion between the law and practice. On this point, this study hypothesized, in aiding policymakers, whether the EU labour policy and practice are happening in the same manner where each gender priorities been protected. The outcome of this study may guide the European Commission to take necessary legal steps to fulfil the new commitment of 'Gender Equality Strategy 2020-2025'.<sup>10</sup> Therefore, along with other relevant reports, this study also reviews the first report of this commission which was published in 2021. Later the critical argument of this paper has been developed through comparing and contrasting the EU's current gender-specific employment scenario with existing labour laws.

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<sup>10</sup> UNESCO. *Gender Equality Strategy 2020-2025*. Bruxelles Fourth World Conference on Women, 2010. (E/CN. 6/2010/L. 1).

## JUSTIFICATION OF STUDYING DIFFERENT GENDER STUDIES

In the EU in particular, research on assessing gender needs in the workforce is not new. Similar to the early 20th century, the majority of studies conducted in the last ten years have prioritized the analysis of binary gender demands in the workplace. For instance, gender gaps in labour market positions about the scope of women in entrepreneurship and the opportunity to set up industries in the countries of the EU have highlighted by Tonoyan et al (2020).<sup>11</sup> Similarly, Alonso et al. (2017) and Boll et al. (2017) have explored a significant gender-based wage gap in the EU territories through a comparative manner between men and women.<sup>12</sup> Supporting, Beham et al. (2019) call upon policymakers' attention through presenting a serious wage gap between men and women concerning part-time jobs.<sup>13</sup>

Certainly, subscribing to binary-sexual opposition's needs these studies generally guide the policymakers to overlook the other gender such as LGBT needs to improve the legal labour architecture.

To address above mentioned gaps, Lloren and Parini (2017) have explored "how LGBT-supportive workplace policies shape the

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<sup>11</sup> Tonoyan, Vartuhi., Robert Strohmeyer, and Jennifer E. Jennings. 2020. Gender Gaps in Perceived Start-up Ease: Implications of Sex-based Labour Market Segregation for Entrepreneurship across 22 European Countries. *Administrative Science Quarterly* 65(1): 181-225. <https://doi.org/10.1177/0001839219835867>.

<sup>12</sup> Alonso, Pamela., Moscoso, Silvia, and Jesús F. Salgado. 2017. Structured behavioral interview as a legal guarantee for ensuring equal employment opportunities for women: A meta-analysis. *The European journal of psychology applied to legal context* 9(1):15-23. <http://dx.doi.org/10.1016/j.ejpal.2016.03.002>; Boll, Christina., Anja Rossen, and André Wolf. 2017. The EU Gender Earnings Gap: Job Segregation and Working Time as Driving Factors. *Jahrbücher für Nationalökonomie und Statistik* 237(5): 407-452. <https://doi.org/10.1515/jbnst-2017-0100>.

<sup>13</sup> Ibid, Barbara Beham., Sonja Drobnič, Patrick Präg, Andreas Baierl, and Janin Eckner. 2019. Part-time work and gender inequality in Europe: a comparative analysis of satisfaction with work-life balance. *European Societies* 21(3): 378-402. <https://doi.org/10.1080/14616696.2018.1473627>.

experience of lesbian, gay men, and bisexual employees".<sup>14</sup> Through this impressive piece of literature, the researchers have presented that the existing policies did not support employees' psychological improvement in terms of equality between other genders and LGBT.<sup>15</sup> Some scholars, like Sansone (2019), have characterized these special genders as pink workers without showing how these workers' rights can be protected by law or not.

Likewise, most of these scholars have failed to present all these gender's needs together in one paper which was found in the discussion of Bamforth (2016).<sup>16</sup> Unlike other legal scholars, Bamforth (2016) have emphasized LGBT along with another gender to describe discrimination scenario based on different sexual orientation and gender identity in Europe. To present an overall status of different genders Bamforth (2016) have partially portrayed a discrimination scenario of different gender in the workplace, nonetheless, in this paper, hinds of the weakness of anti-discrimination legislations have been highlighted.<sup>17</sup>

Consequently, such kinds of literature generally raise some questions like people attitude can be shaped through legal initiatives. And no mistake, laws have power to shape societal attitude.<sup>18</sup> From this point of view, Lloren and Parini (2017) have shown that gender-specific supportive policies and laws can help to reduce the

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<sup>14</sup> Lloren, Anouk., and LorenaParini. 2017. How LGBT-Supportive Workplace Policies Shape the Experience of Lesbian, Gay Men, and Bisexual Employees. *Sexuality Research and Social Policy* 14(3):289-299. <https://doi.org/10.1007/s13178-016-0253-x> 289-299.

<sup>15</sup> Ibid.

<sup>16</sup> Bamforth, Nicholas. *Discrimination on the grounds of sexual orientation and gender identity*. pp.495-526. A. Bogg, C. Costello, & A. C. L. Davies (Eds.), Research Handbook on EU Labour Law Edward Elger Publishing.2016. <https://doi.org/https://doi.org/10.4337/9781783471126.00029>.

<sup>17</sup> Ibid.

<sup>18</sup> G. Aksoy, Cevat., Christopher S. Carpenter, Ralph De Haas, Kevin D. Tran. 2020. Do laws shape attitudes? Evidence from same-sex relationship recognition policies in Europe. *European Economic Review* 124:103399. <https://doi.org/10.1016/j.euroecorev.2020.103399>.



discrimination scenario in the workplace and also assist to improve the psychological health of the employees.<sup>19</sup>

Giving priorities to access equal job opportunities, nonetheless, with a non-discrimination environment to each gender according to their sexual orientation largely depends on the legal structure which remains untold in most of the literature. To address these literature gaps the objective of this study was to review the EU labour laws according to how different gender employment needs have been addressed in this legal structure and its functioning position to ensure all gender needs in EU labour force comparing with some latest reports.

## UNDERSTANDING GENDER PRIORITIES

To further discussion, it is important to know what this study meant by the different gender priorities in labour laws. It is quite common that each gender has its own needs to lead a successful professional life. Some of them can be found as a common need like getting equal opportunity to get a job, and, at the same time, some of them can be found as a specific need like pregnancy leave for women. Unlike the earlier studies<sup>20</sup> which stress comparing between men and women in terms of gender equality in the labour force, this study figures up all-gender needs based on their sexual orientation associated with the labour force. However, for common needs, like

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<sup>19</sup> Lloren, Anouk., and LorenaParini. 2017. How LGBT-Supportive Workplace Policies Shape the Experience of Lesbian, Gay Men, and Bisexual Employees. *Sexuality Research and Social Policy* 14(3): 289-299. <https://doi.org/10.1007/s13178-016-0253-x> 289-299.

<sup>20</sup> Alon, Titan., Matthias Doepke, Jane Olmstead-Rumsey, and Michèle Tertilt. 2020. *The impact of COVID-19 on gender equality*. Gender Equality Network Board of Education Research (Working Paper 26947); Sunindijo, Riza Yosia., and Kamardeen, Imriyas. 2017. Work Stress Is a Threat to Gender Diversity in the Construction Industry. *Journal of Construction Engineering and Management* 143(10): 04017073. [https://doi.org/10.1061/\(ASCE\)CO.1943-7862.0001387](https://doi.org/10.1061/(ASCE)CO.1943-7862.0001387); Chung, Heejung., and Tanja Van der Lippe. 2018. Flexible working, work-life balance, and gender equality: Introduction. *Social Indicators Research*. 151:365-381, <https://doi.org/10.1007/s11205-018-2025-x>.

other studies<sup>21</sup> this study also highlights the status of equal opportunity to getting a job and promotion, receiving vocational training, equal opportunity to involve in an organization, equal opportunity to involve in entrepreneurship, equal wage and pension, and equal treatment on same environments.

To understand specific gender needs this study accounts for different dimension of discrimination that happened based on sexual orientation in the work place like harassment, deprivation in decision making, parental leave, care responsibilities, physical or sexual attacks, psychological pressure to quit a job, passing homophobic comments, and so on.<sup>22</sup> Sometimes, an individual can face multiple grounds of discrimination.<sup>23</sup> For instance, an individual may be discriminated against both as an ethnic minority and sexual minority or from religious and sexual grounds. Sense of helplessness can be the common circumstances of such a scenario which also increase mistrust in public institutions and raise the question of justice in society.

An approach to comparative study using a qualitative perspective has been employed in order to comprehend the various

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<sup>21</sup> Inoue, Miyako. *Neoliberal Speech Acts: The Equal Opportunity Law and Projects of the Self in a Japanese Corporate Office*. Anagnost, In Ann., A. Arai, & H. Ren (Eds.). *Global Futures in East Asia*. Stanford University Press. pp. 197-221. 2020. <https://doi.org/10.1515/9780804784689-010>; Green, Tristin K. *Discrimination laundering: The rise of organizational innocence and the crisis of equal opportunity law*. Cambridge University Press. 2017.; A. Yermek., Buribayev, and Zhanna A. Khamzina. 2019. *Gender equality in employment: The experience of Kazakhstan*. *International Journal of Discrimination and the Law*, 19 (2): 110-124, <https://doi.org/10.1177/1358229119846784>.

<sup>22</sup> Goñi-Legaz, Salomé., and Ollo-López Andrea. 2017. *Temporary contracts, participation in decision making and job satisfaction in European workers*. *International Journal of Manpower* 38(6): 875-892 <https://doi.org/10.1108/IJM-04-2016-0086>; Hoel, Helge., Duncan Lewis, and Anna Einarsdóttir. 2021. *Sexual orientation and workplace bullying*. In D'Cruz P., Noronha E., Caponecchia C., Escartín J., Salin D., & T. M.R. (Eds.) *Dignity Inclusion at Work*. Springer 363-391. [https://doi.org/doi.org/10.1007/978-981-13-0218-3\\_13](https://doi.org/doi.org/10.1007/978-981-13-0218-3_13);

Närvi, Johanna., and Minna Salmi. 2019. *Quite an encumbrance? Work-related obstacles to Finnish fathers' take-up of parental leave*. *Community, Work & Family* 22(1):23-42.

<sup>23</sup> Cormack, Donna., James Stanley, and Ricci Harris. 2018. *Multiple forms of discrimination and relationships with health and wellbeing: findings from national cross-sectional surveys in Aotearoa/New Zealand*. *International Journal for Equity in Health* 17(1):26. <https://doi.org/10.1186/s12939-018-0735-y>.

gender priorities in EU labor laws and practices. Three sections comprise the entirety of the study. The introduction has covered the components of the comparative evaluation, pertinent assessment criteria, study subject matter, and objectives. In the second section, the available legal tools have been examined. Ultimately, a conclusion has been reached that offers recommendations for bolstering the regulatory framework to fend against the effect of new platforms and ensure a non-discriminatory job environment.

The primary information source was the policies of various member states and the EU overall, in addition to a wide range of secondary sources. Contentment analysis and the latest EU legislative framework have been used to provide the comparative discussion. “What are the strengths and weaknesses of the existing legislations to ensure equal gender rights in the EU employment ecosystem?” is the study question that has been addressed using these data. Overall, the researcher supports the argument with several examples of effective international policy endeavors.

## EU LABOUR LAWS GIVING PRIORITIES GENDER NEEDS

To create a favourable and non-discriminatory working environment the EU has tried to prepare an ideal legal architecture. These structures generally consist of several other materials such as the Treaty on the Functioning of the European Union (TFEU), EU labour directives, The Court of Justice of the European Union (CJEU), and the EU charter of fundamental rights (EUCFR). While the directives in EU present the specific labour as well as employment issues, there the EUCFR presents a general and abstract feature of labour issues. To present these legal structures’ purpose and role Monika and Zahra (2020) have portrayed following statement in their manuscript entitled, “The Scope of EU Labour Law”:

EU labour law directives have been adopted over a long period of time (1997-2019), meaning that some of them were adopted under the previous Treaties, while the most recent ones have the Treaty of Lisbon as their legal basis. Most of the directives adopted between 1997 and 2008 respond to the flexibilization of labour markets and are targeted at establishing minimum standards for equal treatment of workers on different types of contracts (part-time, fixed-term, temporary contracts). Other directives, including the most recent ones, focus on setting minimum standards for working conditions for all workers based on an agreed definition of worker (Working Time Directive, Transparent and Predictable Working Conditions Directive, Work-Life Balance Directive). The role of the European Parliament in the adoption of labour law directives has gradually increased under successive treaties. The Treaty of Amsterdam, which entered into force in 1999, increased the role of the European Parliament in terms of co-legislating with the Council including on employment policy. Under the Treaty of Lisbon (in force since 2009), the role of the European Parliament was further recognized as a full co-legislator in the ordinary legislative procedure (p.6).

In a line with this view, the current EU labour laws are the product of the long modification of several treaties and directives. Seven EU directives have been found (Table 1.), between 1997 and 2019, describing labour rights in part-time, fixed-term, and temporary contracts. Except for two directives in 2019, the nature of other directives was to ensure flexibilization of labour markets and minimum standards for equal treatment of workers. Nonetheless, a wider personal scope of the employment relationship can be found in the latest two directives respectively the Transparent and Predictable Working Conditions (TPWC)<sup>24</sup> and Work-Life Balance (WLB)

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<sup>24</sup> Directive (EU) 2019/1152., 'Transparent and predictable working conditions in the European Union' European Parliament, Council of the European Union, <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32019L1152>.

Directives<sup>25</sup> in 2019 like 'who have an employment contract or employment relationship as defined by the law, collective agreements or practice in force in each Member State, taking into account the case-law of the Court of Justice'.<sup>26</sup> However, only the Employment Framework Directive<sup>27</sup> or the Equality Framework Directive (EFD) 2000/78/EC has been securing equal opportunity of employment based on different sexual orientations. Based on these discussions a summarized feature of EU labour law directives is shorted below in Table (1).

Table 1. Summary table of EU labour law directives<sup>28</sup>

Directive	Personal scope	(Possible) exemptions
Part-Time Work Directive (1997)	Part-time workers as defined in law, collective agreements or practice of Member States	Part-time workers who work on a casual basis
Fixed-Term Work Directive (1999)	Fixed-term workers as defined in law, collective agreements or practice of Member States	Initial vocational training relationships and apprenticeship schemes, public or publicly supported training, integration and vocational retraining
Employment Framework Directive (2000)	Equal treatment in the European Union (EU) at the workplace regardless of their religion or belief, disability, age or sexual orientation	Ensure that persons of a particular religion or belief, disability, age or sexual orientation do not suffer from discrimination and

<sup>25</sup> Directive 2019/1158. *Work-life balance for parents and carers and repealing Council Directive*. European Parliament, Council of the European Union, 2010/18/EU' <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32019L1158>.

<sup>26</sup> Szpejna, Monika., and Zahra Boudalaoui-Buresi. 2020. *The scope of EU labour law*. In S. a. Q. o. L. P. IPOL Policy Department for Economic (Ed.). Luxembourg; Martin Risak, and Thomas T. Dullinger. 2018. *The concept of 'worker' in EU law: Status quo and potential for change*. pp. 1-68. Institutes - Eindhoven University of Technology (Ed.). Brussels: ETUI aisbl.

<sup>27</sup> Directive 2000/78/EC. *Establishing a general framework for equal treatment in employment and occupation*. European Parliament, Council of the European Union, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32000L0078>.

<sup>28</sup> Monika and Zahra. n 20.

		instead enjoy equal treatment in the workplace.
Working Time Directive (2003)	All workers, private and public sectors of activity	Seafarers, mobile workers, workers onboard a seagoing fishing vessel. Derogations possible (opt outs) for certain sector or by collective agreement
Temporary Agency Workers Directive (2008)	Workers with a contract of employment or employment relationship with a temporary-work agency	Specific public or publicly supported vocational training, integration or retraining program
Transparent and Predictable Working Conditions Directive (2019)	Every worker in the Union with an employment contract or employment relationship - direct reference to European Court of Justice (ECJ) case law	Workers who work less than an average of three hours per week, certain groups of public sector workers, household workers, and seafarers or sea fishermen
Work-Life Balance Directive (2019)	Every worker in the Union with an employment contract or employment relationship - direct reference to ECJ case law	---

In light of the main argument of this study, the gender priorities along with the LGBTI in EU labour laws have been found only in a few legislations. Except for the EFD,<sup>29</sup> none of the EU directives have highlighted the term sexual orientation association with equal treatment in the labour sector. To ensure equal treatment in employment and occupation irrespective of particular religion or

<sup>29</sup> Directive 2000/78/EC. *Establishing a general framework for equal treatment in employment and occupation*. European Parliament, Council of the European Union. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32000L0078>.

belief, disability, age, or sexual orientation it has included both direct and indirect discriminations.

For direct discrimination, the directive (Directive 2000/78/EC) meant differential treatment based on a specific characteristic, and for indirect discrimination, it meant any provision, criterion, or practice that is neutral but puts the people in the above categories at a disadvantage compared to others. Besides, this EFD (Directive 2000/78/EC) has also characterized harassment that creates a hostile environment as a form of discrimination. Unlike other Directives, the EFD is the only directive that could protect the individual from discrimination based on sexual orientation and so, this directive has raised a wider expectation for non-binary people.

Nevertheless, several critics have raised against this particular Directive's effectiveness to protect LGBT rights. For instance, Tryfonidou (2018) said "... one of the main weaknesses of Directive 2000/78 is its limited material scope, which only covers the areas of employments and vocational training" (p. 246).<sup>30</sup> Further this Directive also failed to protect an individual from a job refusal on their sexual orientation or embarrassment by a colleague at work due to some reason. Therefore, ILGA Europe, who work for LGBTI people's equality in Europe, have critiqued the EU in flowing ways,

Unfortunately, EU law does not at present contain an explicit prohibition of discrimination on the grounds of a person's gender identity and gender expression. Indeed, the EU treaties only entitle the EU to take action to combat "discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation" only, without mentioning trans issues. Neither does a

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<sup>30</sup> Tryfonidou, A. 2018. The impact of the framework equality directive on the protection of LGB persons and same-sex couples from discrimination under EU law. In Belavusau, U., and Henrard, K. (eds.) *EU Anti-Discrimination Law beyond Gender*. Hart Publishing, pp. 229-248.

prohibition on discrimination against trans people appear in the EU Charter of Fundamental Rights (ILGA-Europe, 2019 ).<sup>31</sup>

Stressing out of abolishing gender discrimination EU laws have introduced further two directives (i.e., 2006/54 and 2004/113) ignoring transgender needs only placed man and women needs which also raise a question of priorities of gender in EU laws. Looking for gender priorities, it has been found that giving priorities to all gender a proposal of directives has made in 2008 by European Commission (EC) to a Council Directive. Nonetheless, the latest two directives Transparent and Predictable Working Conditions Directive (2019)<sup>32</sup> and Work-Life Balance Directive (2019)<sup>33</sup> have addressed men and women by meaning all workers where the LGBTI priorities are also not highlighted as a specific gender addressing their labour rights.

Unlike ILGA Europe or other scholars, the EC believed that there has sufficient legal basis to secure all gender needs in the employment sector in the EU. As a shred of evidence on the EC (2022) website two legal bases can be found. Firstly, the prohibition of discrimination based on sexual orientation which found in article 21 of the EU Charter of fundamental rights (EUCFR). Secondly, Article 19 of the TFEU agreed for taking action to combat any type of discrimination based on sex, race, and ethnic origin. Apart from this, the EC has also mentioned directive 2000<sup>34</sup> as a legal instrument of protection for the workplace for all gender. But, ILGA Europe has criticized this directive since it fails a person to protect from job denial and harassment like bullying by fellow workers.

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<sup>31</sup> ILGA-Europe. 2019. What is the current legal situation in the EU? *ILGA-Europe*. <https://www.ilga-europe.org/what-we-do/our-advocacy-work/campaigns/equality-all/legal-situation>.

<sup>32</sup> EU Directive. 2019/1152. n 18.

<sup>33</sup> EU Directive. 2019/1158. n 19.

<sup>34</sup> Directive .2000/78/EC. n 21.



Like the EU directives, the soul instrument of EU labour laws has also been laid in the EUCFR.<sup>35</sup> Featuring two major areas, these laws generally try to ensure strong social protection, social cohesion, and an improved standard of living. Such as promoting quality working conditions which include working hours, part-time and fixed-term work, workers' posting, informing and consulting workers about collective redundancies, transfers of companies, and so on. To introduce EU labour laws Bercusson et al. (2006) have stated,

...two important lessons should be remembered when considering the social and labour provisions in the EU Charter of Fundamental Rights adopted at Nice in December 2000... First, fundamental labour and social standards are determined by the economic and political context. Their content changes with economic and political circumstances. Secondly, social and labour rights develop when linked to policies promoting European integration, when they find a place on the Community's integration agenda (p. 17).

Thereafter, EUCFR plays an important role to non-discriminatory working environment. A couple of clauses and articles of EUCFR generally protects labour rights. Nevertheless, more specific indications of gender-specific priorities in the employment sector are found in Articles 20, 21 and 23 of EUCFR. And the other articles generally act as a guiding principle of the overall nature of equality. Following Table (2) presents the article and clauses in EUCFR that considers as a primary labour legal framework in the EU.

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<sup>35</sup> Directive 2010/C 83/02. *The Charter of Fundamental Rights of the European Union*. The European Parliament, the Council and the Commission.

Table 2. List of labour laws enlisted in EU Charter of Fundamental Rights (2012/C 326/02)<sup>36</sup>

Article Number	Article Theme	Clauses
12	The freedom of assembly and of association	<ol style="list-style-type: none"> <li>1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.</li> <li>2. Political parties at Union level contribute to expressing the political will of the citizens of the Union.</li> </ol>
15	The freedom to choose in an occupation and right to engage in work	<ol style="list-style-type: none"> <li>1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.</li> <li>2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.</li> <li>3. Nationals of third countries who are authorized to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.</li> </ol>
20	Equality before the law	<ol style="list-style-type: none"> <li>1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.</li> <li>2. Within the scope of application of the Treaties and without prejudice to any of their specific provisions, any discrimination on grounds of nationality shall be prohibited.</li> </ol>

<sup>36</sup> Bercusson, B., T. Blanke, & N. Bruun. 2006. *European labour law and the EU Charter of Fundamental Rights*. Nomos Baden-Baden.

21	Non-discrimination	<p>1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.</p> <p>2. Within the scope of application of the Treaties and without prejudice to any of their specific provisions, any discrimination on grounds of nationality shall be prohibited.</p>
23	Equality between men and women	<p>Equality between women and men must be ensured in all areas, including employment, work and pay. The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.</p>
27	Workers' right to information and consultation within the undertaking	<p>Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Union law and national laws and practices.</p>
28	Right of collective bargaining and action	<p>Workers and employers, or their respective organisations, have, in accordance with Union law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action</p>
30	Protection against unjustified dismissal	<p>Every worker has the right to protection against unjustified dismissal, in accordance with Union law and national laws and practices.</p>
31	Fair and just working conditions	<p>1. Every worker has the right to working conditions which respect his or her health, safety and dignity.</p> <p>2. Every worker has the right to limitation of maximum working</p>

		hours, to daily and weekly rest periods and to an annual period of paid leave.
32	Prohibition of child labour and protection of young people at work	“Horizontal” provisions. The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations. Young people admitted to work must have worked conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

(Source: Bercusson et al., 2006)<sup>37</sup>

Following Article 10 of TFEU—ensure of equal democratic rights—the EUCFR bring two important Articles, 20 and 21, to expand a wider jurisdiction to prohibition of discrimination on the grounds of sexual orientation. However, it is still unclear if these legal frameworks can effectively protect the non-discriminatory environment, both inside and outside of the workplace. Because the EUCFR's emphasis on Article 23's clause on the equal rights of men and women in the workplace casts doubt on the guarantee of equality for LGBT people. Even, to date, CJEU don't able to present notable example, except few cases like Case C-451/16 (Work and Pensions of a transgender)<sup>38</sup>, which judgement happened based on Article 4(1) of

<sup>37</sup> Bercusson, Blanke, and Bruun. 2006.

<sup>38</sup> In the 2018 Case, *MB v Secretary of State for Work and Pensions (C-451/16)*, the Court handed down a decision that Equal treatment for men and women in matters of social security...

Retrieved from [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62016CC0451&from=EN#t-ECR\\_62016CC0451\\_EN\\_01-E0001](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62016CC0451&from=EN#t-ECR_62016CC0451_EN_01-E0001)

Council Directive 79/7/EEC<sup>39</sup>, or Case C-528/13 (blood donation of a Gay guy)<sup>40</sup> where the judgement has happened in the light of Article 21(1) and Article 52(1) of EUCFR. Is it possible for current legal frameworks to provide equal gender prioritization in the employment sector at this stage in our discussion? This study attempts to analyse certain recent studies that have drawn attention to the disparities between gender statuses in the workplace in a manner that is consistent with this point of view.

## NATURE OF DIFFERENT GENDER PRIORITIES ADDRESSED IN EMPLOYMENT SECTOR

Unlike other development organizations, the EU generally works in better ways to ensure a non-discriminatory place for all gender by law. Subsequently, going through some latest reports in the EU, which highlight the status of gender equality to advocate policymakers in tackling gender inequalities in Europe, it has found women are enjoying greater inclusion in the employment sector ever before. For instance, according to Eurostat (2020), in 2019, an 11.7 percent employment gap has found between men and women among the 27 countries of Europe.<sup>41</sup> And this gap has been slowing down by 4.6 percent between 2019 and 2005. Again, this report also has highlighted that getting a job rural woman were facing more difficulties compared to women in cities. But in this report, no data

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<sup>39</sup> European Communities Official Journal. 1978. *The progressive implementation of the principle of equal treatment for men and women in matters of social security*. Council Directive 79/7/EEC. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31979L0007>

<sup>40</sup> In the 2015 Case, *Geoffrey Léger v Ministre des Affaires sociales, de la Santé et des Droits des femmes and Etablissement français du sang* (C-528/13), the Court handed down a decision that... Retrieved from <https://fra.europa.eu/en/caselaw-reference/cjeu-case-c-52813-judgment>

<sup>41</sup> "Employment and activity by sex and age- annual data," Eurostat , 2020. [https://ec.europa.eu/eurostat/databrowser/view/lfsi\\_emp\\_a/default/table?lang=en](https://ec.europa.eu/eurostat/databrowser/view/lfsi_emp_a/default/table?lang=en).

have shown the gender-based employment gap between LGBT and the other binary genders.

At the same time, FRA (2020) has found that in 2019, 11 percent of LGBTI people have faced difficulties accessing the labour market in the EU and 21 percent of respondents of the same survey feel discriminated at work. Particularly, 36 percent of transgender have reported that they have been discriminated against at the workplace.<sup>42</sup> Besides, discrimination in the workplace based on sexual orientation have increased 13 percent to 17 percent between 2012 and 2019.<sup>43</sup> This situation illustrates the practical limitations of legal endeavours.

Ironically, according to European Commission Directorate-General for Justice Consumers (2021), the EU and its Member States have targeted a milestone of a 75 percent employment rate for women and men under the Europe 2020 strategy, but they forget about integrating other sexual minority people into this strategy.<sup>44</sup> Although, for a while, if we ignore the LGBTI issues from our discussion, it seems that the EU has a higher standard of legal basis to uphold women's employment scenario, the score of the Gender Equality Index published by the European Institute for Gender Equality (2020) shows a slow improvement of women's situation in the labour market since the score has increased from 70 in 2005 to 72.2 in 2020.<sup>45</sup>

Parenting can be an essential determinant to understand gender priorities in labour law. Regarding this EC found 14.3 percent of women's employment reduced who have a child under 6 years of age and advantage of such situation increases men's employment rate about 9.6.<sup>46</sup> In a line with this view, one of a recent Directive named

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<sup>42</sup> FRA. 2020. *A long way to go for LGBTI equality*. EU-LGBTI. Vol. II. Issue. European Union Agency for Fundamental Rights.

<sup>43</sup> FRA. n 30.

<sup>44</sup> European Commission Directorate-General for Justice Consumers. 2021. *2021 report on gender equality in the EU*.

<sup>45</sup> European Institute for Gender Equality. 2020. *Work in the European Union for 2020*. <https://eige.europa.eu/gender-equality-index/2020/domain/work>.

<sup>46</sup> European Commission. 2020. *Proposal for a Joint Employment Report 2021 from the Commission to the Council*.

“Work-Life Balance for Parents and Carers” (Directive (EU) 2019/1158) also found in the EU with a legal basis for the directive is Article 153(2) TFEU, in conjunction with point (i) of Article 153(1) TFEU. Apart from that, the annual report on gender equality in the EU found highest the gender gap between married men and women with children and the lowest between men and women who are unmarried and have no children in the household.<sup>47</sup> At the same time, European Commission (2020) report also found a higher gender gap in young aged people whose age was below 30 compared to the childbearing age group 30-40 (p. 48).<sup>48</sup>

During the epidemic, surveys revealed that 29 percent of working women with young children found it difficult to focus on their jobs due to family obligations, compared to 16 percent of working males in the same position.<sup>49</sup> During the COVID-19 epidemic, women are more likely to pare corners on their job hours or quit entirely to care for their children.<sup>50</sup> To tackle such gender needs there is no such legal structure have found in the EU.

In a similar vein, following the Proposal for a Joint Employment Report 2021 from the Commission to the Council by EC it has clear that existing laws and regulations of the EU cannot minimize the gender gaps in employment of women with disabilities, women from migrant communities or other minority groups, women with children

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<https://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=8351&furtherPubs=yes>.

<sup>47</sup> Boskovic, Sara Grubanov-, Guido Tintori, and Federico Biagi. 2020. Gaps in the EU Labour Market Participation Rates: an intersectional assessment of the role of gender and migrant status. *Publications Office of the European Union*. <https://publications.jrc.ec.europa.eu/repository/handle/JRC121425>.

<sup>48</sup> European Commission. 2020. Proposal for a Joint Employment Report 2021. From the Commission to the Council. <https://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=8351&furtherPubs=yes>.

<sup>49</sup> “Women and the labour market: has COVID rolled back recent gains,” *Eurofound*, 2020. <https://www.eurofound.europa.eu/publications/policy-brief/2020/women-and-labour-market-equality-has-covid-19-rolled-back-recent-gains>.

<sup>50</sup> Alon, Titan., Matthias Doepke, Jane Olmstead-Rumsey, and Michèle Tertilt. 2020. *This Time It's Different: The Role of Women's Employment in a Pandemic Recession*. National Bureau of Economic Research.

or mother with dependent children, women in vulnerable situations or disadvantaged like young and older women. Like a shred of evidence, according to Gender Equality Index by European Institute for Gender Equality (2020), in the EU women with disability generally have a low probability to get full-time equivalent employment and in terms of the gender gap, the rate is 21 percent compared to 29 percent for men with disability.

Again, coming to non-binary sexually-oriented individuals' needs in the labour market. The EC believes that the prohibition of discrimination based on sexual orientation and ensuring equal job opportunity can possible under the existing legal framework. Despite that, reports, showing the status of LGBTI in Europe, presenting a different scenario. For instance, in 2019 a comprehensive report shows that 58 percent of LGBTI people have been suffered in the workplace.<sup>51</sup> Besides, 46 percent transgender people, 60 percent intersexual people, 29 percent lesbian, and 46 percent bisexual people have been reported as harassed because of their specific sexual orientation. One-fourth of LGBTI people usually hide their identity in the workplace. Presenting bitter experience, FRA highlighted the following statement of lesbians in Poland,

When my boss found out that I was gay, she didn't fire me (of course, she couldn't), but she just started to do everything so I would quit myself. She needed a month to break me - I did actually quit and she reached her goal. (p. 31)

Similarly, 35 percent of transgender people and 32 percent of intersex people used to face harassment in the workplace.<sup>52</sup> Homophobic comments were one of the common natures of harassment in the workplace. Nevertheless, there is specific law as well as regulation in EU that can prohibit the spreading of the homophobic waves under the same roof. Supporting this view, the FRA highlights another statement of a Swedish young gay man,

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<sup>51</sup> FRA. n 30.

<sup>52</sup> *ibid.*



I hear homophobic comments almost every day at work, if not every day it is definitely every other day. It gets so hard sometimes you feel very ostracized that you are not normal according to them. (p. 32)

Focusing on multiple grounds of discrimination reviewing the FRA report has also found that the people of the LGBTI community like women or men face also multiple grounds of discrimination and there have no such laws that can protect them. For example, 36 percent of LGBTI people have not only faced discrimination as a member of the LGBTI community but also have disabilities. Similarly, being ethnic minorities 40 percent have faced another ground of unfair treatment.<sup>53</sup> Even fear of being misjudged 41 percent of respondents would not like to report these unfair treatments.<sup>54</sup>

However, coming to the discussion of economic activity status, this study further found an unequal treatment as well as the participation of different gender in different sectors. In Europe, the percentage of self-employment women and women start-up entrepreneurs can be found as 34.4 percent, according to the report of WEgate (2020), despite having more than half of the European population as women.<sup>55</sup>

No official record has been found associating with female entrepreneurship and participation in innovation. However, to accelerate it the EC has adopted a new strategy under the platform of WEgate (2020) were emphasizes digital skills the women will be encouraged to be an entrepreneur and take part in innovation.<sup>56</sup> No such quality improvement program or policy for LGBTI people has been found in the EU. Similarly, understanding the unadjusted gender pay gap, only 2018 data have been found in Eurostat.<sup>57</sup>

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<sup>53</sup> FRA. n 30.

<sup>54</sup> *ibid.*

<sup>55</sup> "Women entrepreneurship: facts and figures," *WEgate*, 2020. <https://wegate.eu/women-entrepreneurship-facts-and-figures>.

<sup>56</sup> *Ibid.*

<sup>57</sup> "Gender pay gap in unadjusted form," *Eurostat*, 2020. [https://ec.europa.eu/eurostat/databrowser/view/sdg\\_05\\_20/default/table?lang=en](https://ec.europa.eu/eurostat/databrowser/view/sdg_05_20/default/table?lang=en).

According to Eurostat (2020), women in the EU earn an average of 86 cents for every euro a man earns. Likewise, by 2018 the pension gap between men and women found 29.5 percent throughout the EU.<sup>58</sup>

There appears to be a lack of awareness among legislators as there is no official record of the pension or pay gap for LGBTI individuals in the EU. Nevertheless, through the report of FRA (2020), it can be found that, in 2019, 41 percent respondents were involved in paid work, 7 percent of survey participants were self-employed, 1 percent respondents were engaged in unemployed as well as volunteer works, and the percentage of unemployed LGBTI people were 5.

Besides, only 1 percent of intersex respondents have found involved in civilian service in the survey of FRA (2020) Unlike this scenario, the unemployment ratio in 2020 among women has increased from 6.9 percent in April to 7.9 percent in September whereas male unemployment increased from 6.5 percent to 7.1 percent in the same period.<sup>59</sup> In this circumstance, two perspectives may emerge: either existing legal frameworks failed to define all gender demands, or existing legal frameworks are not functioning well in practice. However, to draw a single conclusion lack of comprehensive material have limited this study. Instead of drawing a single conclusion this study has open the ground which may guide the legislators and researchers to take conduct a comprehensive survey on this framework.

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<sup>58</sup> "Gender pension gap by age group - EU-SILC survey," *Eurostat*, 2020. [ilc\_pnp13].

[https://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=ilc\\_pnp13&lang=en](https://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=ilc_pnp13&lang=en).

<sup>59</sup> "Unemployment by sex and age - monthly data," *Eurostat*, 2020. [https://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=une\\_rt\\_m&lang=en](https://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=une_rt_m&lang=en).

## CONCLUSION

Elimination of discriminating working environment for all gender is a common goal of all national and international organizations. Consequently, several legislative initiatives in the form of different policy and legal measures are generally found in every organization which tries to ensure a healthy labour market through protecting labour's rights. The effectiveness of these legal initiatives, howsoever, also remains a matter of assessment. From this point of view, this study aimed to understand how different genders' needs have been given priority in the EU labour laws and practice.

Unlike most of the existing literature, to assess the existing labour laws this study has tried to address gender needs based on their sexual orientation. Serious wage gaps between males and females regarding parental leave, getting jobs, and promotions have been found through reviewing some latest EU-funded reports. At the same time, it has also been seen that none of the comprehensive surveys presenting LGBTI people's employment status have found supporting the existing directives to call attention to LGBTI labour right in the EU. Subsequently, more than half of the respondents of the latest survey reports of FRA have faced discrimination and harassment both to get a job and in the workplace. Increasing homophobic attitudes in the workplace was also another consequence of the weakness of the existing system.

There were no integrated and complete survey results that emphasized labour status based on diverse sexual orientations, this study was limited in its ability to give a thorough comparison between legislation and practice. Hence, it is recommended to the EU to adopt a comprehensive legislative manifesto by integrating men and women along with LGBTI. In addition, by examining existing ones, this study proposes that necessary legislative steps be taken to protect women's and LGBTI workers' labour rights in terms of minimize pay inequalities and pension discrepancies. To be here,

further measures need to be taken to enhance the participation of women and LGBTI persons in entrepreneurship and creative professions. More research on the multi-faceted and diverse grounds of labour discrimination is required.

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