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# **Gender pay gap: causes, consequences and policy mechanisms to face a worldwide phenomenon**

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*Culture does not make people. People make culture.*

-Chimamanda Ngozi Adichie, author and activist



## ABSTRACT

Even though women in the last four decades have made incredible breakthroughs reaching the same educational level of their male counterparts, these achievements have not resulted in a complete equality in terms of opportunities and, especially, salary. Taking this assumption as a starting point, the scope of this dissertation is – precisely – to provide a comprehensive analysis of gender pay gap. After having provided a qualitative and quantitative overview of the phenomenon and an explanation of the main consequences of the wage gap not only for women and their families, but also for economy and the society as a whole, the emphasis is put on the policy mechanisms and legislative actions performed at different levels. The exploration starts with the consideration of the central role played by the International Labour Organization, continues with a deep analysis of the commitment of the European Union and is concluded with a focus on Italy. Moreover, particular relevance is given to the investigation of the causes of the gap, including the glass ceiling. This latter is considered as a self-standing phenomenon, related to the gender pay gap and worthy of a specific focus on. Furthermore, in the last part of the dissertation, a concrete case study is provided.



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# INTRODUCTION: A BRIEF HISTORY OF FEMALE PARTICIPATION IN THE LABOR MARKET AND THE CHALLENGES OF TODAY

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*“Women have made important advances in labor markets. The distinctions between the activities of single and married women are not as sharp as they used to be, and ambition to do well in a job is no longer restricted to men” (Garibaldi et al. 2010).*

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During the twentieth century, labor has changed radically in terms of both content and members of the workforce. Moreover, there has always been an intrinsic gender component related, for instance, to a sexual<sup>1</sup> division of roles, a lower social recognition of female labor and a different involvement of the two genders in family work activities. Therefore, during the twentieth century, the expression *women’s jobs* was popular in order to explain one of the main features of female labor: the plurality of its perspectives. Women were, in fact, involved in both paid and unpaid work, performing professional tasks and, at the same time, taking care of children, elders and housework. This, together with a number of social restrictions and impositions burdening on the female portion of the society, has created overworked generations of women and has forced them to miss occasions to achieve high levels of specializations that could have given them more professional opportunities. Even in the post war period, despite the fact that during the two World Wars female workforce has replaced men in employment, the female role was strictly linked to domestic work.

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<sup>1</sup> The difference between biological sex and gender as a social construct are recognised by the author, but due to the fact that they do not represent a key concept for the purpose of this dissertation, they are here used – for simplicity of expression – as equivalents.

In countries like Italy, the economic miracle gave a strong contribute in redefining the nuclear family as a consumer unit and in reinforcing the stereotype of the consumer-woman opposed to the working-man. Moreover, working women – who were the ones from the lower social classes – were often employed by factories: in a period in which mass production was sustained by new technologies, it was possible to substitute the qualified male staff with non-specialized female workers, generally paid approximately 30% less than their male counterparts. Another reason for their employment in low-qualified fields is related to the fact that those fields are the only ones able to support the high turnover that has always characterized female workforce, due to factors related to the reproductive sphere that, for example, make impossible to work overtime and cause high absentee rate.

The awareness of the social value of caring activities and housework has been reached only in the 1970s thanks to the second wave of feminism that aimed at dismantling gender stereotypes that had prevented the full intellectual and professional development of women and their complete personal achievement as individuals. The result is an increase in female education, the first step to reach gender equality also in the working environment.

According to a study conducted by McKinsey & Co. in 2007, nowadays *“European women have many reasons for optimism. Compared with their counterparts around the world, they – as 11% of the worldwide female population – are well off in many respects. Today, they occupy positions of power and prestige that, 50 years ago, would have been unthinkable. European women also wield significant economic power. With close to 10 million women who run their own businesses or are self-employed, they play a considerable economic role as entrepreneurs, and they make a large proportion of purchasing decisions”*.

Despite the considerable progress achieved towards a full gender equality also in the workplace<sup>2</sup>, even in the contemporary era, inequality persists and there is no legal rule in the area of employment relationship that can be fully understood and evaluated without being considered within the larger framework of social rules – and stereotypes – that continue to affect and regulate family life. Marzia Barbera talks about a “*gender contract*”, a *special division of labor in the family – both professional labor and care activities – based on gender*, which is essential to completely understand also market trends. In the traditional labor law model, the average-worker has always been a full-time, willing-to-travel employee with a permanent contract, and consequently, also social policies have always been primarily addressed to white males, who perfectly fit the theoretical model.

The belief that “business is a male’s game” is still too widespread, even in the old continent, and “*both men and women themselves often doubt that women have what it takes to be leaders*”, states the McKinsey research. The same research identifies four myths that represent a real barrier limiting women’s opportunities of career. They are essentially related to the presence of supposed male characteristics and values that lack in professional women. According to the study, men tend to spend more time at work, even overtime, place a great importance on power and status, and are willing to openly fight to reach their objectives; on the contrary women tend to “let the job speak for themselves”, being less assertive and prone to a non-hierarchical style. These characteristics are often the result of a “gender-stereotyped” education which teaches young girls that “bossy” is a positive word only if associated to a man, while for a woman is better to be compliant, and that strength is almost always correlated to unfemininity. There is still the preconception that managers are intrinsically male and this leads to a different treatment of female employees: in case of failures, while men are considered individually, women are always seen as the litmus test of their gender and their inaccuracies are automatically extended to all the category. In addition, a

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<sup>2</sup> The expression “gender equality in the workplace” is referred to a situation in which “*people are able to access and enjoy the same rearwards, resources and opportunities regardless of gender*” (definition provided by the Australian Government).

number of expectations directly linked to motherhood are still burdening on women: they are expected to be always present to meet the needs of their children, although the same expectations are not applicable to men, who are still considered the primary breadwinners. This means that both the society as a whole, and single individuals, even women, can be reluctant to accept a reversal of the usual roles. The fact that a woman who chooses to build a career instead of a family is still seen as “incomplete”, and the simple acceptance of the idea itself that a woman must face such choice instead of being able to carry on both of them, are clear symptoms of a lack of a real gender equality and just two of the most evident signs of a structural problem in a society that continues to fail in leveraging the productivity of half of its citizens.

The purpose of this dissertation is actually to investigate the gender pay gap, considered as an expression of a larger phenomenon of undervaluation of female work. In the first chapter the pay gap is defined and a general overview on the consequences is provided. Moreover – in order to understand the actual proportions of the phenomenon itself – a quantitative analysis is offered. The second chapter is the one dedicated to the analysis of the policy mechanisms aimed at addressing wage disparities, both at international and European level. Furthermore, it contains a specific focus on Italy. The third chapter is dedicated to the investigation of the causes of disparities in retribution and contains references and links to the glass ceiling phenomenon. The fourth – and last – chapter provides a concrete case study as part of a more general analysis of a specific sector, the banking and financial one.

# CHAPTER 1 – THE GENDER PAY GAP

The framework described in the introduction paragraph is necessary in order to understand the main topic this dissertation is dealing with: the gender pay gap. Indeed, even though women in the last four decades have made incredible breakthroughs reaching the same educational level of their male counterparts, these achievements have not resulted in a complete equality<sup>3</sup> in terms of opportunities and, especially, salary.

## 1.1 Definition and overview

At European Union level the gender overall earnings gap is “*the difference between the average annual earnings between women and men*” and it takes into account not only lower hourly earnings, but also lower employment rates and the common disadvantage that women face related to the lower number of hours worked in paid jobs. The gender pay gap is quantitatively calculated as a “*percentage of men’s earnings and represents the difference between the average gross hourly earnings of male and female employees. The term “gross earnings” refers to wages paid directly to an employee before any deductions for income tax and social security contributions are made. In the EU, the gender pay gap is referred to officially as the ‘unadjusted gender pay gap’, as it does not take into account all of the factors that impact on the gender pay gap, such as differences in education, labor market*

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<sup>3</sup> Please note that here the term *equality* is used referring to the definition of *gender equality* in its inclusive, multi-dimensional and intersectional meaning, covering women’s empowerment, non-discrimination and equal rights regardless of gender. Often this expression and the one “*gender equity*” are used interchangeably, but the latter puts the focus on fairness and justice regarding benefits and needs for women and men, girls and boys and it is often used to avoid talking about women and girls’ human rights. Therefore, also in the human rights agenda, both at international and national level, the expression *gender equality* is always preferred (definitions provided by Sida, a government agency working on behalf of the Swedish parliament and government, with the mission to reduce poverty in the world).

*experience, hours worked and type of job*<sup>4</sup>". Additionally, hourly earnings are the most common measures used in order to compute the gender pay gap percentage since they allow to compare men's and women's wages independently from the number of working hours: indeed, the wage gap would easily increase simply due to the high number of women working part-time. Nonetheless, the downside of this *modus operandi* is that it is possible to encounter some problems regarding the presence of bonuses or seasonal rewards that would increase full-time retributions. Moreover, the use of male wage as a wage gap comparison measure entails an implicit assumption that men's pay is the "fair salary" that women want to get: the gender pay gap clearly reflects the differences in wage structures among the various nations, allowing an interpretation of specific socio-economic contexts and the consequent planning of appropriate strategies for efficient and effective action at both national and international level.

On the other side of the Ocean, the American Association of University Women – promoting equity and education for women and girls and fighting for equal pay since 1913 – has defined the gap as the "*difference in men's and women's median earnings, usually reported as either the earnings ratio between men and women or as an actual pay gap*", as showed below.

$$\text{Pay gap} = \frac{\text{men's median earnings} - \text{women's median earnings}}{\text{men's median earnings}}$$

The problem of gender pay gap is deeply felt in the United States, where in 2015 "*women working full time typically were paid just 80% of what men were paid*" (with a gap of 20%) and where the gender issue is strictly correlated with the ethnic one. According to statistics of the year 2016, "*earnings are affected by race and ethnicity as well as gender*": in the U.S., white women are "*paid more than African American*

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<sup>4</sup> European Commission's "*Tackling the gender pay gap in the European Union*" (2014).

*and Hispanic women at all education levels*”<sup>5</sup> confirming that one of the factors affecting earnings is the mere discrimination, which – as reported by OECD – is defined as “*the situation in which persons who provide labor market services and who are equally productive in physical or material sense are treated unequally in a way that is related to an observable characteristics such as race, ethnicity or gender*”. Labor market discrimination is related to the preference of economic agents – employers, but also customers – for some categories of persons instead of others. According to OECD, “*prejudiced consumers derive their utility both from consumption of goods and services and from the type of person engaging in market transactions with them*”, while “*prejudiced employers act as if they must not only pay the market wage, but also pay a so-called discriminatory psychic penalty*”. In other words, prejudiced employers try to avoid the uncertainty, which is typical of the process of hiring and promotion of employees, basing their hiring and wage decisions on a biased method founded on stereotypes, implicitly assigning to single individuals the expected abilities (or inabilities) of their own category.

According to the Glassdoor Economic Research (GER), the presence of a mere discrimination is actually the cause of only a minimum part of the overall gap, which, just to give some examples, goes from the 49% in Germany to the 29% in France, passing through the 33% of the U.S. and the 39% of Australia. This “unexplained” part is complementary to the “explained” wage gap, related to actual differences among workers. They will be both examined in details in the third chapter of this dissertation, the one investigating the causes of the phenomenon.

## 1.2 Consequences of the phenomenon

Despite the fact that the problem of gender pay gap has been – at least since the last decade of the twentieth century – at the top of the political agendas of developed countries, which have tried to take corrective measures, it is still an issue that makes

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<sup>5</sup> The American Association of University Women (2017).

notice. According to the International Labor Organization, the gender pay gap has narrowed in the European Union between 1995 and 2006, but is still a *persistent phenomenon* that causes concern in both developed and developing countries.

In general, the effects of wage inequalities are complex and quite variegated, according to the context that is the object of the analysis: of course, the pay gap produces quite different outcomes when combined with different social structures, legal frameworks and cultural backgrounds. As a consequence, often literature tends to outline the implications of gender pay gap taking restricted geographical area as a reference, in a country-by-country analysis. Here the attempt is to provide a comprehensive framework in order to explain the main consequences of the wage gap not only for women and their families, but also for economy and the society as a whole.

### 1.2.1 Direct consequences on women and their families

Gender based disparities on the workplace can cause a number of consequences on the lifetime earning of a woman, that can be reduced by both a lower wage and a work experience characterized by continuous interruptions in case of assistance to the elders and maternity. The reasons that make women more likely to leave the job to perform caring roles are cultural, as previously said: OECD estimated that in 2016 women spent more than three-hundred hours in unpaid work, while men only one-hundred. However, there are also practical motivations: there is a self-reinforcing cycle according to which female workers tend to be employed in “lower-earning” positions that allow them to take more parental leave, which in turn make career advancements difficult. Actually, some sociologists talk about a “mommy penalty”, a word used to identify the systematic disadvantages in pay, benefits and even perceived competences encountered by working mothers, which represents an extra form of penalization, additional to the gender-based one.



The first direct consequence of an individual wage gap is certainly related to a total income gap between men and women, calculated considering not only the revenues of the labor force with both employees and self-employed workers, but also investment revenues and various other incomes deriving from government payments and pensions. The problem of disparities among citizens with income from any sources was already raised in Canada in 1994, when publications showed that “*women had a total income of \$15,308, or 59% of men’s \$26,089*”. Obviously, the direct consequence of a pay gap in the working-age is a gap also during retirement. The so-called pension gap is easily explained by the fact that the pension is the result of a calculation made taking into account both career earnings and labor force participation. Once again, the problem was highlighted in Canada: a research commissioned by the Canadian Advisory Council on the Status of Women showed that, in 1993, “*women’s Canada/Quebec Pension Plan benefits averaged only 59% of men’s*”. In more recent times, another research performed in the U.S., showed that “*in 2014 the median annual income of women ages sixty-five and older was only 56% of men’s the same age*”. Moreover, in Italy, a working paper released in 2017 by the COVIP<sup>6</sup> commissioner shows that gender gap is still high both in social security and supplementary pension. The gap recorded is, essentially, the transposition on social security of labor market disparities in terms of access difficulties, job retention, retribution, incidence of absenteeism, intermittence of careers and the greater use of part-time contracts. In particular, the introduction of the contribution-based method, in order to rationalize the social security system through cost containment, has dramatically emphasized the theme of the inadequacy of the performance in presence of intermittent and discontinuous careers since it considers only contributions *de facto* paid by the worker. Analogously, in the supplementary pension, based on the capitalization mechanism, the individual position depends on the amount of contributions paid to the pension fund and the length of the payment period, as well as on the returns on the financial markets. It is obvious, therefore, that the average characteristics of female careers also affect the size of the sum accumulated by the

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<sup>6</sup> Commissione di Vigilanza sui fondi Pensione, the commission monitoring pension funds.

subscriber and, consequently, her income. As already stated by Hurley in 1996, the final outcome of this condition is to have the almost half of the population – women – experiencing a diminished standard of living after retirement for a longer period of time, due to their longer life expectancy. It correspondingly means that women are also more likely to have higher medical expenses than their male counterparts. The physiological consequence of this situation is that an increasingly high number of female workers are more and more prone to postpone their retirement in order to make up for lost working time and to defer the moment in which they will be forced to rely on a social security system that is inadequate to provide for their essential needs.

Another fundamental issue is related to how gender pay gap affects the family the woman belongs to. In that respect, it is essential to understand that the analysis must be conducted taking into account a dual perspective: the first perspective is merely economic, the second one includes also socio-cultural aspects.

From a purely economic point of view, it is necessary to observe that “*middle-class families have increasingly come to rely on women’s incomes to make ends meet*”. This state of affairs is particularly common in U.S., a country in which, according to data of 2016, in 6% of the families the mother is the sole breadwinner and 28% of families are composed by a single mother. The result is that 34% of American families with a working mother rely exclusively on her wage. In addition, in the remaining 66% of families with working women, they contribute nearly 40% of the family’s total earning<sup>7</sup>. Also, in Italy, according to Istat, families where only women work, are becoming increasingly numerous. They were 1.7 million in 2008 (i.e. 9.6% of the total), they became 2.4 million in 2014, which means 12.9% of the total Italian families. Considering the state of affairs, it is easy to understand that the presence of gender pay inequalities means not only reducing the financial stability of a single worker, the woman, but it is a phenomenon that affects also other individuals, including dependent children: constant inequalities in earnings imply lower family incomes and a higher number of children living below the poverty threshold.

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<sup>7</sup> Data from The Gender Pay Inequality Report by the Joint Committee Democratic Staff (2016).

Consequently, as the U.S Joint Economic Committee states in its report, *“closing the gender pay gap and enabling women to maximize their earning potential would substantially improve the financial position of America’s families, helping them better afford quality child care, housing, health care and education”*.

From a socio-cultural point of view, the first immediately recognizable consequence of the presence of disparities in wages – and, more in general, of inequalities on the workplace – is related to the reinforcement of traditional gender roles at household level. Especially in cases of activities that provide a low income in itself – and, for their nature, do not represent a sufficient source of financial support for the worker – gender pay gap is one of the factors that contribute to the consolidation of the relationship of economic dependence established between the woman and her male partner, the breadwinner. Economic dependence often means limited or even absent influence of the woman over the distribution of both financial resources and household chores. Another remarkable aspect, from a socio-cultural point of view, is related to the proved relationship between women’s wages and their exposure to violence, especially the domestic one<sup>8</sup>. In particular, a report financed by the European Commission and published in 2017, deeply analyzed not only the incidence of absolute economic independence of the woman, but also the comparative degree of financial independence, which basically means that *“how much she earns in comparison with her partner influences the risk of intimate partner violence”*. Indeed, according to the economic theory of household bargaining, *“increases in a woman’s relative wage increase her bargaining power and lower levels of violence by improving her outside option”*; in other words, women with higher financial resources can threaten to leave and are less forced to find an accommodation in case of violence. A study conducted by Anna Aizer using data of female hospitalization

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<sup>8</sup> According to Art. 3-b of the Council of Europe Convention on preventing and combating violence against women and domestic violence (the “Istanbul Convention”), *“domestic violence shall mean all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim”*.

after assault – more trustworthy because they do not rely on self-reports of violence – confirmed the theory finding a relationship of inverse proportionality between wage gap and violence against women. Analogously, according to the resource dependency theory, the higher are the socio-economic resources of a woman, the higher is also her negotiating power and the possibility that she has to defend herself from intimate partner violence. Similarly, Atkinson in 2005, through her gendered resource theory, amended the position of Macmillan and Gartner. They argued that the imbalance in financial resources affects violence because the resources themselves have a symbolic meaning, while, according to the gendered resource theory, *“relative resources matter only if the male partner holds traditional views about gender roles”*. Another interesting factor is associated with changes in economic conditions, that can increase or decrease violence most significantly than the condition itself: for instance, if the male partner enters unemployment, this change in the condition is likely to intensify violence more than a permanent state of unemployment itself because the partner’s comparative earning decreases abruptly and he *“tends to feel his masculinity threatened by a spouse with ‘excessively high’ levels of resources such as assets, earnings or occupational prestige”*. Undeniably, education plays a big role in defining the circumstances: according to statistics, a low educated partner is twice as likely to become abusive than a higher educated one. Nevertheless, it is proved a causal relationship between women wages – and, in general, women condition in the labor market – and intimate partner violence: this imply that policies aimed at reducing gender pay gap also reduce gender-based violence in the household. Evidences can be found looking at U.S. administrative data on domestic violence, which show that the 9% reduction in violence itself occurred between 1990 and 2003 was the result of a rise in potential wages for women.

Other interesting data are provided by a research published in 2015 in the U.S. regarding the incidence of major depressive disorder (MDD) and generalized anxiety disorder (GAD): indeed, *“the prevalence of depression and anxiety is approximately twice as high among women as compared with men in the United States”*. The

attempt was to demonstrate that structural gender discriminations – together with biological factors and gender differences in psychological factors such as stress reactivity – actually have an impact on the distribution of such mood disorders within the population. The study, essentially, evidenced that discriminatory policies, procedures and practices – such as gender pay gap – have a direct negative impact on women’s mental health. This is largely due to the increase in psychological stress, even at unconscious level: in fact, due to social and cultural constraints – which make also women consider reasonable some gender-based stereotypes and unfair treatments – only a minimum part of the discrimination is actually perceived as unjust. According to Platt and his colleagues, who conducted the research, *“if women are more likely to internalize negative workplace experiences as reflective of inferior merit, rather than the result of discrimination, they may be at increased risk”*. Moreover, also the unbalanced distribution of household chores previously described contributes to overwhelm women, who are exposed to higher levels of stress, which in turn have been shown to cause sleep loss and an intensification of mood and anxiety symptoms. According to the authors, *“the accumulation of experiences like these may have lasting effects on the gender disparities in mood and anxiety disorders”*.

### 1.2.2 Consequences on society, economy and businesses

Another interesting aspect, that clearly derives from the problem of an unfair distribution of incomes and work within the household, is related to the phenomenon of the so-called feminization of responsibilities. Specifically, this notion is related to three observations that have become extremely relevant in modern societies. They were already mentioned in the previous paragraph and are related to: first, a *“growing gender disparity in the range and amount of labor invested in household livelihoods”*; second *“a persistent and/or growing disparity in women’s and men’s capacities to negotiate gendered obligations and entitlements in households”*; and third, an increasing discrepancy between women’s responsibilities – that are growing

– and their rewards, in which there is a small or no increase at all. The feminization of household headship is considered one of the main causes of the growing level of poverty of women; and, undeniably, the female poverty rate increases faster than the male one. These considerations directly lead to talk about the concept of feminization of poverty, meaning a permanent status of neediness, typical of the female portion of the society, which is referred not only to privation of basic needs, but also to a lack of choices and opportunities. Even the International Poverty Center of the United Nations has dealt with the phenomenon, but for reasons of clarity and honesty, it is necessary to specify that a really small number of studies exist in this field. Nonetheless, it is undeniable that the existence of forms of discrimination in the workplace and, specifically, of a gender pay gap causes negative socio-economic consequences for society as a whole. As reported by a study conducted by Gradín *et al.*, “*removing discrimination from the wages of women who work would substantially reduce poverty in most EU countries*”. According to the authors, the result would vary widely depending on the level of discrimination itself: in countries with a higher level of inequality, the effect would be greater with about 10% of the poor improving their condition. Indeed, in countries such as Spain, Portugal, and Germany, female workers earn between 0.80 and 2.10 euro per hour less than their male counterparts and “*the income loss due to discrimination against women in these countries represents about five or 6% of total family income*”. The same conclusion was reached by Costa and Silva, who used a model involving five Latin American countries in order to demonstrate the possible positive outcomes of a reduction of discriminations in the workplace. According to their model, in case of an increase in gender equality, also income distribution is different: in some cases, women were also expected to earn more than their male counterparts because they are generally more qualified. In both cases, the result is an improve in economic growth through the advancement of the poor. As explained in the 2015 ActionAid report about the cost of inequality in women’s work, “*an economy that is permanently subsidized by the exploitation of women’s work is dysfunctional and can only bend so far before it breaks*”. According to the same report, the reduction of unequal wages and the

increase in opportunities for women to have access to paid jobs would generate and additional global outcome of 1.6 trillion<sup>9</sup>: indeed, at the present state of affairs, women face countless constraints deriving from a social structure that strongly inhibits their capacity to contribute to economic growth. The economic empowerment of women would result in the constitution of a more skilled and variegated group of workers, with undeniable benefits for businesses, and specifically a reduction of the gender pay gap would increase the overall economic prosperity. This, from a fiscal point of view, would mean a decrease in tax breaks and an increase in tax revenues, as already explained in a study conducted for the Canadian Ministers of Education in 1991, which prospected a significant increase in GDP *if women participate in the labor force on an equal basis as men*.

Working for the complete elimination of gender pay gap means not only give women a greater chance to be fully entitled to become the master of their own existence playing an active role within the society, but it also means that the whole society is evolving towards a state in which each one of its members is fully integrated and is given the same credibility. In order to achieve this goal, a fundamental function is carried out by unions: in particular, a key role of the process leading to equal pay is played by collective bargaining. Actually, during the years of the financial crisis, a growing number of European unions reported increasing difficulties in keeping the question of gender pay gap at the top of their negotiations agenda; and the lack of proper assessment of the impact on women's workforce of austerity measures is threatening the achievement of full equality objectives. However, a survey conducted in 2014 by the European Trade Union Confederation showed that countries with a high level of collective bargaining tend to integrate better gender equality issues in negotiations between businesses and workers and have better policies for reconciliation of working and family life. Moreover, unions are also involved in the most difficult struggle, the demolition of stereotypes: almost half of the unions considered in the survey have activated training courses for mediators and members

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<sup>9</sup> Value calculated in U.S. dollars.

in order to overcome the constant undervaluation of female work. Indeed, only a change in culture, with a more “*egalitarian attitude toward employment, housework, and childcare*”, could lead to a society that really guarantees equal opportunities and is able to fully leverage the productive potential of female workers, with benefits – in term of greater profitability – for the economy as a whole.

## 1.3 Quantitative analysis

Before moving forward in our discussion and analyzing the legal structure, it is necessary to complete the framework with a quantitative analysis of the phenomenon, therefore the concluding part of this first descriptive chapter will provide data related to gender disparities and pay gap.

### 1.3.1 The Global Gender Gap Index

Every year since 2006, the World Economic Forum proposes the Global Gender Gap Index – through which it measures the gender gap in more than a hundred countries around the world – based on four different criteria: participation and economic opportunity, level of education, health and survival rate, political responsibilities.

In the last report, published in 2016, Italy occupies the fiftieth position, just a few steps ahead of the position occupied in 2015, when it was in the seventy-second, but still far behind the top ten. On the podium there are Iceland, first place for the eighth consecutive year, Finland and Norway: if you are born man or woman in these nations, it does not make much difference in terms of career or education. It should be noted, however, that the Global Gender Gap Index measures the internal differences of opportunity between genders and not their absolute level, in order to not penalize the poorest countries. The World Economic Forum – analyzing one hundred and forty-four countries – assigns 1 as the highest score, which means equality, while the minimum score is 0 and corresponds to the total gender disparity. In particular, Italy occupies position one hundred and seventeenth in terms of economic gap (score



0.574), and position fifty-six with regard to education. This result clearly demonstrates how the involvement of women does not reach very high rates in these two criteria.

### 1.3.2 European Union: overview

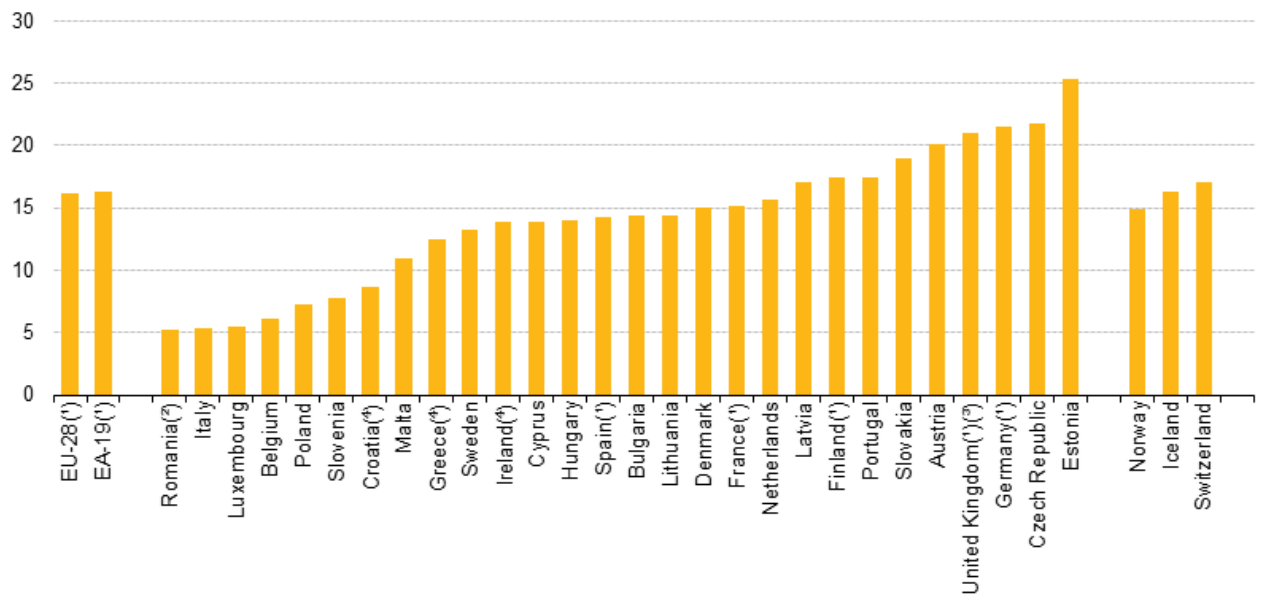
According to a report published in 2016 by the Eurofound, “*in almost all Member States, employment and labor market participation (or activity) rates for women, even if they have increased over the decades, are still systematically lower than for men*”. Moreover, gender wage inequalities are still present, even if they broadly vary among member states and the gender pay gap is considered an important indicator to express and monitor wage disparities within the European Union in the framework of the European employment strategy<sup>10</sup>.

The last update of the article “Gender pay gap statistics” by Eurostat is dated March 2018 and refers to data of 2016. In that year women’s gross hourly earnings were averagely 16.2% lower than men’s one in the whole European Union and 16.3% in the euro zone. The data show a moderate improvement if compared with the ones of the year 2015, when women's gross hourly earnings were averagely 16.3% lower than men’s one in the whole European Union, and 16.8% in the euro zone. This means that women earned on average 84 cents for every euro earned by a man. However, the variation of gender pay gap is still huge even among member states: values go from the 5.2% of Romania to the 25.3% of Estonia. More details about the above-

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<sup>10</sup> The European employment strategy was developed in 1997 and is part of the Europe 2020 growth strategy. Its aim is to create “*more and better jobs throughout the European Union*” and it is based on four steps: employment guidelines proposed by the Commission, the Joint employment report, national reforms programs submitted by national governments, and a series of country reports (definition by the European Commission).

mentioned variations are provided in Fig. 1, taken directly from the Eurostat website.



Note: For all countries except the Czech Republic: data for enterprises employing 10 or more employees, NACE Rev. 2 B to S (-O); Czech Republic: data for enterprises employing 1 or more employees, NACE Rev. B to S

(\*) Provisional data

(\*) Estimated

(\*) Estimated by Eurostat

(\*) 2014 data

Figure 1

If compared with 2010, gender wage disparities have decreased in the majority of member states: Belgium has moved from 10.2% in 2010 to 6.1%, Luxembourg has lost 3.2 percentage points, and Romania lost 3.6%. Contrariwise, Slovenia moved from 0.9% of 2010 to 7.8% of 2016 and Portugal gained 4.7 percentage points.

Another consideration is linked to how the gender wage gap vary depending on age. In the table in Fig. 2 – taken by Eurostat website – it is quite clearly explained how gender wage disparities increase with age: this often happens due to frequent career interruptions women have to face during their life.

	< 25 years	25 - 34	35 - 44	45 - 54	55 - 64	65 years +
Belgium	-2.7	0.6	5.3	7.1	15.4	:
Bulgaria	6.9	13.9	20.0	17.6	6.2	2.0
Czech Republic	11.4	13.8	27.4	23.8	15.1	20.4
Denmark	6.5	10.9	16.1	18.2	16.0	11.0
Spain	10.3	7.7	10.4	16.7	22.7	48.6
France	-3.8	8.4	12.8	18.9	21.1	29.2
Italy	16.0	5.1	5.7	6.4	5.7	:
Cyprus	6.1	-0.6	9.7	23.8	26.3	51.9
Latvia	13.2	16.1	21.0	14.9	13.5	17.1
Lithuania	14.1	17.3	20.0	11.2	10.3	13.8
Hungary	3.7	10.5	19.7	15.8	7.7	22.3
Malta	2.7	9.0	13.1	11.9	7.1	21.1
Netherlands	3.6	1.0	9.5	20.1	21.1	15.9
Poland	7.6	9.0	12.0	6.9	2.3	-13.7
Portugal	8.0	8.3	14.9	23.5	23.2	43.0
Romania <sup>(*)</sup>	-1.1	1.1	6.7	4.8	2.8	17.5
Slovenia	6.8	7.0	9.7	12.2	6.4	0.0
Slovakia	10.9	12.6	24.2	21.8	17.0	22.1
Finland	4.4	11.4	18.0	19.1	21.3	21.2
Sweden	4.5	8.4	14.8	16.4	16.1	14.3
United Kingdom <sup>(*)(*)</sup>	4.5	12.7	22.0	27.7	26.9	26.8
Iceland	2.3	8.6	18.4	24.4	21.0	20.1
Norway	1.9	7.8	14.8	18.4	20.8	19.6
Switzerland	3.4	7.1	15.4	22.1	22.9	31.5

Note: For all countries except the Czech Republic: data for enterprises employing 10 or more employees, NACE Rev. 2 B to S (-O); for the Czech Republic: enterprises employing 1 or more employees, NACE Rev. B to S; data not available for Germany, Estonia, Ireland, Greece, Croatia, Luxembourg and Austria.

: data not available

(\*) Provisional data

(\*) Estimated

(\*) Estimated by Eurostat

Figure 2

The condition is particularly uncomfortable for older women, who cannot benefit from a number of equality measures, simply because they did not even exist when they started their careers. Is it easy to notice that the situation is serious especially in Cyprus and Spain, where gender pay gap reaches levels of 51.9% and 48.6%, respectively. Conversely, Romania shows small values, but unfortunately this is related to the fact that men are more often promoted than women in almost any sector and only 4% of women are CEO.

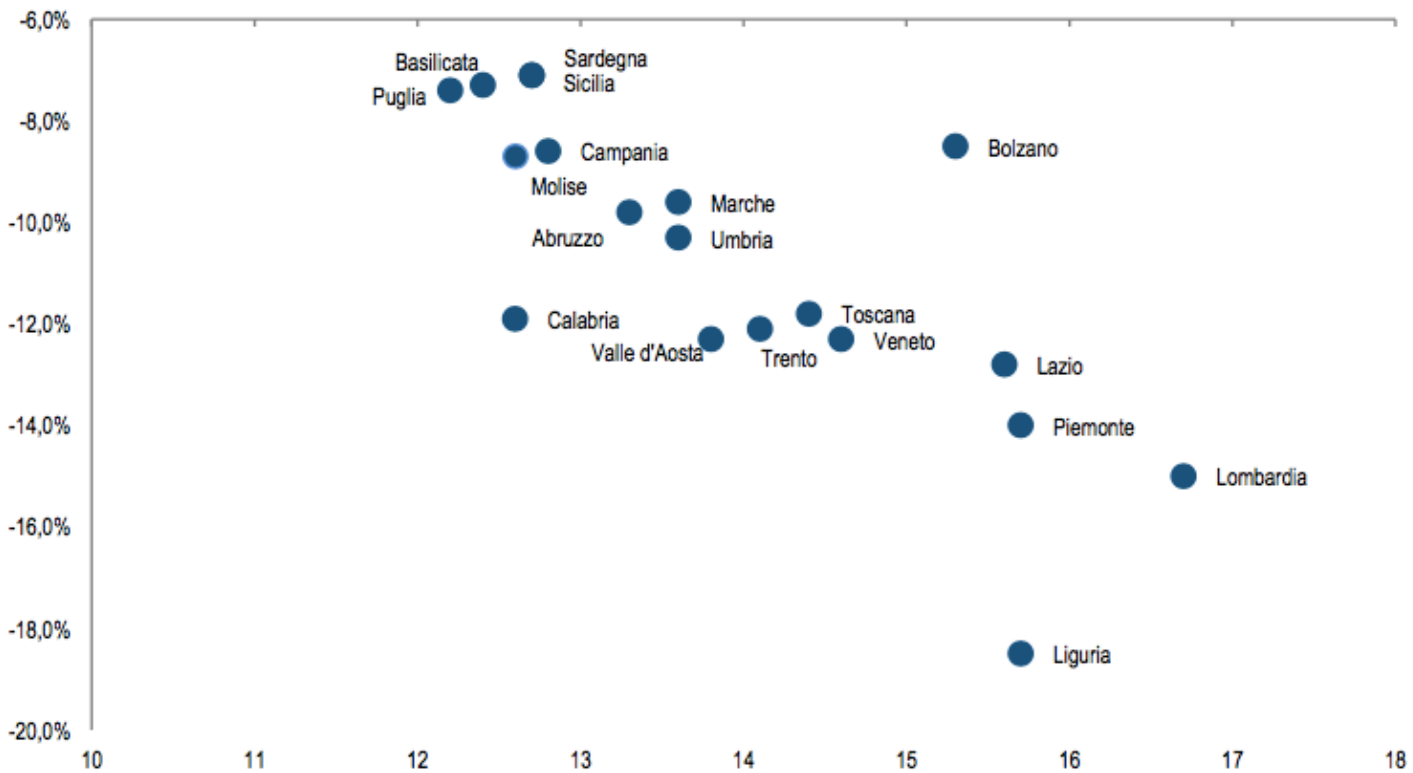
### 1.3.3 The Italian case

The latest Istat survey on gender pay gap, referring to 2014 data, shows that in Italy men perceive 1.8 euros per hour more than women in the private sector. In fact, women should work a month longer to have an annual salary equal to a male's one: taking into account an average wage, the difference is about three-thousand euros per year. The total GPG is 6.1% in favor of males: is one of the lowest in Europe, but worse than 5.3% in 2010. This result is unexpected, considering that in countries where there is always an active battle against gender differences – such as in Finland, Denmark and Sweden – the pay gap is wide. This anomaly is partially explained considering female employment rates in these countries, indeed when female employment grows, pay differentials also increase. The female employment rate in Italy is among the lowest in Europe: over 50% of Italian women in the age between 15 and 64 have no paid employment and the pay differential does not consider this problem. Indeed, in countries where women's employment is not very high, women who work are "selected", there is therefore a lower proportion of women performing manual and low-skilled jobs and a higher portion of women in more qualified – and profitable – positions: this results in very low gender wage disparities. With the increase in female employment, this “selection” is reduced and even less qualified or part-time workers enter the labor market. Consequently, at first glance, Italy seems to have the one of the results in EU for gender pay gap, but this result is falsified if we consider the low female employment rate.

Going in details, it is necessary to clarify that data must be interpreted also considering the number of employees per gender: an equal distribution of women and men (50%) would certainly have led to different results. The sectors with a higher gender pay gap are the ones related to science: such a gap derives from disparities in universities, where women who choose scientific faculties are a minority. Therefore, technological – and most profitable – sectors are the ones with the lower number of women. The record of inequality is in the field of arts, sports, and entertainment,

where men earn half more of their colleagues. The difference is due to higher pay for male professional athletes, for example in football. The fields in which the hourly wage is higher for women are only three: the construction sector, where men perceive 12% less than women; mining (women earn 4% more) and transport and storage (1% more for female employees). In the latter sector, men – even if they are the majority – are generally workers with a lower pay and women are generally employees, paid more, but it is also the one in which the goal of an equal pay is closer.

Moreover, the report by Istat, published in 2016, evidences that from a territorial perspective, the gender pay gap is wider in regions with a higher hourly pay for older males. Regions with lower remuneration, such as the islands and some in the south, have a pay gap which is lower than in the regions with higher average remunerations. A complete framework in that respect is shown in Fig. 3.



Fonte: Istat, Registro RACLI Anno 2014

Figure 3

# CHAPTER 2 – ADDRESSING THE ISSUE: POLICY MECHANISMS AND LEGISLATIVE ACTIONS

## 2.1 Role of legislation and structure of the chapter

Nowadays, in almost every country of the world, women still suffer from discriminations. This is what emerges from the Global Gender Gap Report published in 2016 by the World Economic Forum. The instrument used to quantify disparities is the Global Gender Gap Index, which – as already explained in the previous chapter – takes into consideration, among other parameters, female labour force participation and opportunities offered to women by society, always bearing in mind wage disparities. Reading the Report, and considering the analysis done in the first part of this dissertation, it seems particularly obvious that the issue of gender inequalities is not only widespread but is also a structural problem; the direct consequence of several layers built from past societies, layers that we are overcoming but are not completely overthrown yet. As a direct consequence, a structural change is needed. This change cannot be the result of the sole effort done by women and society but requires the involvement of institutions. As early as 1994, Susan Bullock, in her book *“Women and work”*, highlighted the importance of labour standards, due to their ability to *“empower women by outlining women’s rights”*. Indeed, labour standards represent the first form of guidance for workers’ organizations and governments when they have to develop concrete local actions. Additionally, both the *ex-ante* process of monitoring for the development of the convention, and the *ex-post* procedures of supervising the application of the convention itself provide helpful information to pressure governments. Moreover, they represent a form of legitimization of women’s concerns, giving dignity to their conditions and stressing the need for a recognition of their role in the labour force and in the whole economy.

Coherently with this view, the aim of this chapter is, firstly, to provide an explanatory framework of international intervention – in the form of agreements, declarations, resolutions and conventions – to reach equality in employment, wages and the labour market; and later move on to the reconstruction of the process that has led the European Union and single Member States to develop appropriate legislation on the topic. A specific focus on Italy will be provided in the last section of the chapter.

## 2.2 International intervention

### 2.2.1 The central role of ILO

The Preamble of the International Labour Organization Constitution of 1919 clearly declares that “*universal and lasting peace can be established only if it is based upon social justice*”. In coherence with this belief and its mandate to promote decent work conditions, ILO during its history has always worked for the protection of women and, specifically, on the principle of equal remuneration for work of equal value; even if this goal has been pursued with different methods according to the changing roles of women in society in different times. The organization has used different instruments to reach its objective, including Conventions and Recommendations<sup>11</sup>. In an attempt of classifications of ILO tools addressing gender equality, it is possible to identify three different categories. The first one includes labour standards that clearly refer to gender equality and non-discrimination. Examples in this sense are the Equal Remuneration Convention (1951, N° 100) and the Convention concerning Discrimination in Respect of Employment and Occupation (1958, N° 111). The second category encompasses the so called “gender-sensitive” standards – which do not mention explicitly equality but contain provisions that, for their nature, take into consideration the different needs of the two genders; the Convention on part-time workers (1994, N° 175) and the one on home workers (1996, N° 177) are part of this

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<sup>11</sup> More information on ILO instruments and structure are contained in Annex N° 1.

group. The last set includes technical standards, which are neutral by definition, but can become gender-specific during the implementation phase.

Starting from these premises, the aim of the following paragraphs is exactly to investigate the ILO role in promoting equal remuneration at work through the analysis of the fundamental conventions, the ratio behind them and the process of their adoption in an attempt to provide a general framework of the instruments used at international level to achieve equality at work.

### 2.2.2 Fundamental Conventions

Looking at the list of key gender equality conventions published on ILO website, the two fundamental ones for the purposes of this dissertation are Convention N° 100 adopted in 1951, commonly known as the *Equal Remuneration Convention*, and Convention N° 111 – adopted in 1958 – namely the *Convention concerning Discrimination in Respect of Employment and Occupation*. The latter requires states to establish and implement policies on access to work, training and working conditions aimed at eliminating discrimination based on race, gender, religion, political opinions, nationality, social background and to promote equal opportunities and treatment; while the former entered into force on 23 May 1953 and recalls the principle of equal remuneration for work of equal value putting it into effect. Here follows a focus on the Equal Remuneration Convention, with the aim of clarifying not only its contents, but also the ratio behind its drafting, through an analysis of the role of ILO and of the process that has brought to its adoption.

#### *Equal Remuneration Convention: the ratio behind*

An important premise to understand the ratio behind the adoption of the Equal Remuneration Convention is that the issue of equal pay is basically a gender issue. This means that the political intervention is strictly intertwined with the philosophical feminist thought, which has constantly accompanied and influenced the process of



negotiation. The concept of negotiation itself is crucial in so far as equal pay is considered not only the direct outcome of a political activity, but also the consequence of a process of rebalancing of power between genders. According to modern feminist theories<sup>12</sup>, gender is the result of cultural values, characteristics and roles that are assigned to one gender or the other. In other words, gender is a social construct; and this social construct has always assigned to men the role of breadwinners and to women the role of family cares: women’s retribution has traditionally been considered just a support to men’s one. In this sense it is possible to affirm that there is a male dominance and its degree varies depending on the extent to which women are subordinated to men. An interesting point of view in this sense is given by Paula Määttä: she recalls the concept of gender contract already examined by Hirdman (2001), who believed that between the two genders, a “gender contract” exists and it makes gender roles and relations visible. Määttä improves this concept identifying the scheme in Figure 1 (next page), which is composed of four contract models, differentiated according to the level of male domination.

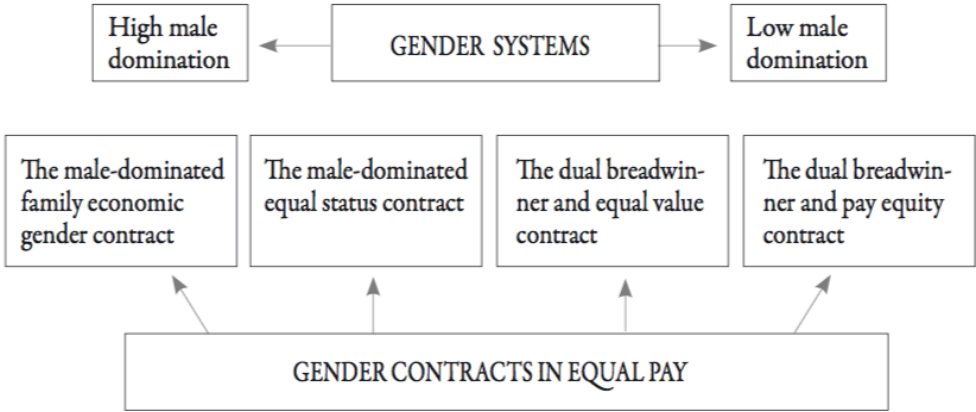


Figure 3: the scheme proposed by Paula Määttä.

<sup>12</sup> The roots of the so called social constructionism are found the work *The social constructionist movement in modern psychology* by Gergen Kenneth J. (1985)

Moving from the left part of the figure to the right one, we find decreasing levels of male domination and of female subordination. In the *male dominated family economic gender contract* there is a strong gender-based division of labour and the woman is seen as a mere “assistant”, while in the *dual breadwinner and pay equity contract* women and men are considered equal independent individuals, equally active in the breadwinning process. Between these two extremes there are two situations in which the dependence of women gradually decreases because they are considered “secondary employees, with lower wages and positions” (*male-dominated equal status contract*) or because equality between genders is formally recognised by a legislation which is difficult to fully implement due to the persistence of structures in the labour market that systematically penalize female workers (*dual breadwinner and equal value contract*). According to the author, these contracts are typical of different geographies, and their occurrence depends on the degree of development of the economy and labour markets, and the level of awareness of institutions in charge of implementing measures promoting equality.

Regardless of the kind of gender contract existing in different areas of the world, the presence itself of a tacit contractual relation between two parties – males and females – implies by its nature that a process of negotiation can be started. Indeed, the procedure that has led to the approval of the Equal Remuneration Convention, can be seen, in practice, as a long process of negotiation between two parties – the two genders – that made the international institution itself evolve and converge towards a common perspective shared with feminist organizations and associations – bringing the values and needs of a part of the population, women, that for a long time has not seen its value fully recognised.

### *Equal Remuneration Convention: contents, adoption and related issues*

Despite the fact that the notion of equal pay has been considered by ILO since the very beginning of its existence, it took almost thirty years to be concretely placed into the agenda of the International Labour Conference (ILC). In the first part of the twentieth century the issue of equal remuneration was the subject of controversial discussions not only within the ILO, but also among different feminist organizations, which stood up for diametrically opposed positions. While the *equal rights feminists* were sustaining the concept of complete equality between women and men (“men and women are born equal”) trying to emancipate themselves from the conventional role of wives-and-mothers, the *difference-feminists* based their arguments on a traditional view of maternity and familiar roles that requires women to be always protected and on the assumption that between the two genders there are inescapable biological dissimilarities – essentially related to the reproduction sphere. The ILO has been committed to this latter approach for decades; for example, during the International Labour Conference – 10th Session – of 1927 the Director of ILO talked about “*working conditions which are more suited to women’s special physical and mental conditions*”. This approach has been translated in protective measures that then led to a direct conflict between the ILO itself and the Open Door International (ODI)<sup>13</sup> which considered ILO policies restrictive and, in practice, able to prevent women from accessing the most remunerative jobs – such as, at that time, mining. The Open Door International, after its Berlin Conference in 1929, requested formally the ILO to adopt an Equal Pay Convention with reference to the Treaty of Versailles<sup>14</sup>. For the

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<sup>13</sup> The Open Door International was established in 1926, in Britain, with the name of Open Door Council, by Lady Rhonnda (Six Point Group), Elizabeth Abbott (NUSEC), Miss Clegg (London Society for Women's Service), Emmeline Pethick-Lawrence (Women's Freedom League) and Virginia Crawford (St Joan's Social and Political Alliance). It was aimed at obtaining equal economic opportunities for women. In June 1929 an international committee was formed and it held a conference in Berlin for individuals and organisations on equality within the workplace. From this, emerged a group called the Open Door International for the Economic Emancipation of the Woman Worker.

<sup>14</sup> The Treaty of Peace of Versailles was signed on 28 June 1919 and in its Part XIII, Section II “General Principles” mentioned the principle that “*men and women should receive equal remuneration for work of equal value*”.

first time, emphasis was put on the nature of the work, not on the gender of the employee. The direct consequence was the start of a campaign by ODI to get a statement from the International Court of Justice, but at that time no government was willing to bring the case to the Court. Hence, ILO approach continued to be strictly related to the idea of a domestic woman – whose role was mainly the maternal one – and a breadwinner man.

It will take until the 33<sup>rd</sup> session of the International Labour Conference – which took place in June 1950 – to place the issue of equal pay on the ILO agenda. During the procedure for its adoption, a large debate was raised. The topic was, above all, whether the labour standard on equal pay was necessary or not; in fact, while the worker group believed that the issue of unequal pay was a social problem and deserved consideration, the employer group argued that the topic was too complex and too much related to the peculiarities of different territories to be regulated at international level. Other topics of discussion were related to the most suitable form for the norm and its scope of application. The norm – which was considered applicable to all employees in all economic sectors – posed some questions also in terms of methodologies of implementation. The issue was related to the perspective of a state intervention to guarantee the implementation of the standards: the convention itself, in fact, requires states to cooperate with employer and worker organization for its correct application.

Furthermore, a survey – conducted thanks to the collaboration of twenty-six governments and aimed at obtaining information on the issue – showed that there was confusion on the two wordings “equal remuneration” and “work of equal value”. The former expression caused misunderstandings due to the uncertainty of the components that had to be included in the definition of remuneration itself, while the latter because the concept of value varied across different countries. The definition of the *equal pay for work of equal value* was a process that involved the consideration of three main points of view. The first one considered the performance of a female employee executing a job compared to the one of a male employee performing the

same job that is, basically, comparing the efficiency of a woman in relation to the efficiency of a man. The second point of view considered the cost of production for the employer and was based on the assumption that if a job is performed by a woman, it involves additional costs of production such as special welfare facilities, higher rates of absenteeism and the need for extra supervision. The third and last approach – the one supported by international women’s organizations – considered the work as the sole relevant factor, without giving relevance to the gender of the employee. Opportunely, the majority of representatives in the International Labour Conference followed this last approach. The *Committee on equal remuneration for men and women workers for work of equal value* was established with the scope of examining the question and produce a report that was submitted to the International Labour Conference, which adopted a resolution to place the subject on the June 1950 agenda. In order to overcome the already mentioned problem of the most suitable form for the norm, two drafts were proposed: the first one included a Convention with general principles and a Recommendation setting methodologies of application, while the second one was a Recommendation alone. Nine international women’s organizations met in Geneva in June 1951 to prepare a statement proposing some amendments to the submitted draft and in the same month the second report of the Committee on equal remuneration for men and women workers for work of equal value was presented at the ILC, which took the final decision: in 1951 the proposed Equal Remuneration Convention N° 100, together with the Equal Remuneration Recommendation N° 90, was adopted.

*The Convention concerning Discrimination in Respect of Employment and Occupation and further ILO policies concerning female employees*

At the end of the 1950s, ILO approach concerning women in employment started to change, moving towards the direction of promotion of human rights and fight against discriminations. Basically, until this moment, women and men were considered equal in adopted agreements and conventions, but these standards faced problems in implementation also due to the fact that women’s organizations themselves found

difficulties in being taken seriously in national and international arenas. The change was driven by the intervention of the UN Convention on human rights, which, in 1954 requested the ILO to modify its perspective and approach the question of wage discrimination in a new light. In fact, the UN Declaration on Human Rights, adopted by the UN General Assembly in 1948, in its Art. 23 states that everyone, without any discrimination, has the right to equal pay for equal work. Indeed, according to UN, disparities in wage could be considered a form of violation of human rights and ILO was obliged to intervene – also in compliance with its purposes of social justice. In this scenario, in 1958, the International Labour Conference adopted the Discrimination (Employment and Occupation) Convention. It requires states to adopt legislative measures able to promote equal opportunities and prevent all forms of discriminations in employment whether they are based on ethnicity, colour, gender, religion, political opinion, national or social origin. That is, among the others, to recognise indirectly the right of any individual to receive a fair and equal pay for work of equal value.

The concept of equal opportunities introduced with Convention N° 111 was recalled and developed during the 1970s and 1980s, when the policy of ILO was focused on the concept of equality. The issue of wage disparities and the relative Conventions were – during these decades – considered and implemented under a new light: the old perspective, according to which female workers had to be always protected, was progressively abandoned in favour of a new policy aimed at ensuring equal treatments and opportunities for the two genders. In coherence with this new approach, in 1985 the Committee on Equality in Employment was established to take care of specific issues related to equality in employment, for example to strengthen the female participation in trade unions, giving women the possibility to better contribute to the development of pay policies. In the same year, the Resolution on Equal Opportunities and Equal Treatment for Men and Women in Employment was adopted and it led to the creation, two years later, of the ILO Plan of Action on Equality of Opportunity and Treatment for Men and Women in Employment – which,

differently from the latter Resolution, regarded the two genders and was not specifically addressing the needs of female employees. Indeed, ILO progressively improved its actions towards assisting measures in order to support states while developing policies and programmes able to ensure the full equality in working conditions.

During the 1990s, in order to *reduce* discrimination in employment, the programme on Equality of Rights was established and the technical cooperation of ILO with governments increased, for example giving assistance in case of potential discriminations in collective agreements or providing specific training programmes. Furthermore, to have a complete framework of the ILO strategy during the 1990s, it is necessary to recall the Declaration and the Platform for Action (PFA) adopted in the UN Fourth World Conference on Women, which took place in Beijing in 1995. It was the formal moment in which the so-called *strategy of gender mainstreaming* was presented. It represented an important change in the strategy of the ILO, which started to become structured. In other words, the focus moved from the *de jure* realization of equality at work – through standards – to the *de facto* outcome of organised measures aiming at addressing gender equality: the emphasis was no more on the need to find a fast solution, but on an essential intervention able to eradicate a structural problem. Indeed, governments committed themselves to adopt legislative measures in compliance with ILO standards – specifically Convention N° 100 – and aiming at promoting respect for the fundamental rights of employees, including equal remuneration. These principles were reaffirmed in the document “*Further actions and initiatives to implement the Beijing Platform for Actions adopted*” in 2000 by the UN General Assembly. Again, this text did not recognise explicitly the principle of equal pay, it rather set up a broad strategy aimed at addressing the worldwide phenomenon of unequal retribution through a comprehensive gender approach. The gender mainstreaming strategy – aiming at achieving gender equality through actions on structural obstacles – has been reaffirmed in 2015 during the Beijing + 20 Summit, which took place in New York.

### 2.2.3. ILO leading role

ILO itself plays a leading role in promoting gender equality at work and supports its strategy through concrete Action Plans. The last one that has been realised – the Action Plan for gender Equality 2016-2017 – set measurable objectives in compliance with the 2030 Agenda for Sustainable Development, agreed by the international community, and ILO key standards to achieve decent conditions of employment. It is also supported by the UN System-wide Action Plan on Gender Equality and Women’s Empowerment (UN SWAP) setting the criteria for an adequate gender analysis<sup>15</sup>. The final results of the Plan were available in December 2017. The objective was concretely expressed through thirty-two indicators: for twenty of them the target was met.

Likewise, with the same reference to the 2030 Agenda for Sustainable Development, and the same commitment to a concrete implementation of gender equality at work, the Action Plan for Gender Equality 2018–21 has been shaped.

## 2.3 The European Union: a sixty years lasting commitment

### 2.3.1 Equality as a value: the origins of European social policies against gender disparities

Equality between the two genders has always been a fundamental value for the European Union, although the motivations of its centrality have changed all over the

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<sup>15</sup> “*The UN SWAP states that adequate gender analysis includes the following: examination of inequalities between women and men; assessment as to how gender equality can be promoted; scrutiny of assumptions about “families”, “households” or “people” that may be implicit in the way a problem is posed or a policy is formulated; collection and analysis of data or information to the experiences and situations of both women and men; sex-disaggregation of data which enables formulation of gender-responsive, transformative approaches to development; substantive consideration of activities where women are numerically dominant (such as domestic work); analysis of the problem or issue and proposed policy and/programme options for implications in the lives of women and men, girls and boys, and realization of gender equality, with associated adoption of interventions that support an equitable distribution of benefits and opportunities*” (directly reported from the ILO Action Plan for Gender Equality 2016-2017).



years, resulting from the evolution of the European Coal and Steel Community into the Union as it is known today. The European commitment towards gender equality has always been translated into a concrete *policy effort* to reach gender equality, not only in terms of elimination of any form of discrimination and gender-based violence, but also in terms of women's participation in decision making processes, public and political life, and in terms of access to economic resources and participation to the labour market.

The current *acquis communautaire*<sup>16</sup> includes a wide variety of legal acts and court decisions aiming at ensuring gender equality within the European Union: this is the result of a long and complex process started by the founding members of EU in the late fifties. In 1957, when the “older” Member States – Belgium, France, Germany Italy, Luxembourg and the Netherlands – signed the Treaty of Rome establishing the European Economic Community (EEC) they produced the first provision aimed at ensuring equal retribution for men and women. Indeed, Art. 119 EEC stated that *“each Member State shall (...) ensure and subsequently maintain the application of the principle that men and women should receive equal pay for equal work”*. According to this provision, “pay” means *“the ordinary basic minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives, directly or indirectly, in respect of his employment from his employer”*. The European Court of Justice (hereafter also ECJ) has always interpreted Art. 119 in an extensive way, including in the notion of pay not only basic remuneration, but also compensations of other nature such as bonuses paid to the employee and travel facilities. Other social security systems or benefits, such as retirement pensions remain out of this definition, as it will be explained further in this paragraph. Even the notion of “worker” has been interpreted by the ECJ in a broad manner, indeed it includes in general people providing services to another person, under his/her direction, receiving a remuneration in return for the service provided.

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<sup>16</sup> The wording “*acquis communautaire*” is used to refer to the collection of legislation, legal acts and Court decisions that compose European Union law.

Is important to underline, here, two things. The first one is that Art. 119 EEC prohibits both direct and indirect discrimination meaning that it not only prohibits unequal treatments based on gender, but also discriminations that are the result of the application of general criteria which systematically disadvantage one sex supporting the other<sup>17</sup>. The second one is that the provision of Art. 119 was included for a pure economic reason. Member States wanted to remove any form of distortion in competition and, in particular, France – that had already implemented provisions on equal retribution – had interest in avoiding that the presence of cheaper female workforce from other countries would put in difficulties French manufacturers. It will take until 1976 for this provision to acquire also a social role: as often happened in the history of European Union, the merit of having interpreted a provision in an extensive way giving it social relevance belongs to the European Court of Justice. The case involved Gabrielle Defrenne, as applicant, and her employer, the Société Anonyme Belge de Navigation Aérienne Sabena, as respondent<sup>18</sup>. It started because the woman, who was a flight attendant working for the Belgian company – after the termination of her contract at the age of forty due to an imposition coming from Belgian law – brought an action before the Court asking for a compensation, because she had always been paid less than her male colleagues, and for a supplement to the allowance she received when she retired equal to the allowance received by male colleagues with same age and seniority. In judging the case, the European Court of Justice<sup>19</sup>, recognised that Art. 119 cannot prescribe “*in addition to equal pay, equality in respect of the other working conditions applicable to men and women*” but also specified that the elimination of any form of discrimination between the two genders is a human right that has to be protected and promoted by Union law. This assumption represents, *de facto*, a milestone in the path of transformation followed by the European Union: it clearly states a change of course, from a purely economic coalition to a Union committed to the protection and promotion of social values. A

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<sup>17</sup> For a more specific definition of direct and indirect discrimination, see the next paragraphs.

<sup>18</sup> ECJ 8 April 1976, Case 43/75 Gabrielle Defrenne v Société Anonyme Belge de Navigation Aérienne Sabena

<sup>19</sup> At that time Court of Justice of the European Community.

further step forward towards a “social Union” was made in more recent times – in 2000 – when the ECJ had to judge the case of Lilli Schröder against Deutsche Telekom AG (formerly Deutsche Bundespost Telekom)<sup>20</sup>: in this occasion, the Court stated that the principle of equal pay is a fundamental human right, therefore “*the social aim of Art. 119 EEC is even more valuable than its economic purpose*”.

### 2.3.2 An intense legislative activity

The legislative activity aimed at promoting gender equality has been particularly intense in the years between the late fifties and the nineties. Article 119 itself should have been implemented within 1961 but this did not happen because Member States were not sufficiently committed to the cause or because they were unable to transpose the provision into national law. Therefore, the implementation of the Article became a priority and was introduced in the Council Resolution agreed in 1974<sup>21</sup>, through which the Community decided to adopt a new directive on equal remuneration between women and men. In the same period, another strong incentive for the adoption of new provisions on the topic came from the ECJ, which had to judge the case known as Defrenne II. The outcome of this judgement, has been particularly significant in the European path to gender equality for two main reasons. The first one is related to the recognition that Art. 119 had *direct effect* – that is the possibility given to individuals to enforce the provision before national courts not only against public entities, but also against other individuals (i.e. private employers) – while the second one is that the concept of equal pay cannot leave other forms of equality out of consideration. In the Defrenne judgement, the Court had to state that the concept of equal pay *stricto sensu* does not include other social security systems or benefits, such as retirement pensions, because they are directly administrated through legislation and do not concern the relationship between employer and employee. It is easy to understand that such an assumption created a strong need for new legislation

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<sup>20</sup> ECJ 10 February 2000, Case C-50/96 Deutsche Telekom AG, formerly Deutsche Bundespost Telekom v Lilli Schröder

<sup>21</sup> Council Resolution of 21 January 1974 concerning a social action programme

aimed at reaching gender equality also in all the fields not covered by the notion of “pay” as it was intended in art 119 EEC.

### *The three Equal Pay Directives*

As already explained in the last paragraph, the lack of implementation of Art. 119 represented an incentive to the production of new legislation. The first result of this process aimed at favouring the implementation of the principle of equal remuneration was the Directive on the application of the principle of equal pay for men and women – commonly known as the First Equal Pay Directive of 1975<sup>22</sup>. The text of the Directive, in its Art. 1 states: “*The principle of equal pay for men and women outlined in Article 119 of the Treaty means, for the same work or for work to which equal value is attributed, the elimination of all discrimination on grounds of sex with regard to all aspects and conditions of remuneration. In particular, where a job classification system is used for determining pay, it must be based on the same criteria for both men and women and so drawn up as to exclude any discrimination on grounds of sex*”. Essentially, this provision is declaring that the principle of equal remuneration applies not only to equal work, as stated in art 119, but also to work of equal value. The Directive is not contradicting the Treaty – it would have been impossible since the latter is a superior source of law – but, as explained by the ECJ-<sup>23</sup>, its content had been previously involved in Art. 119 because the notion of “same work” contained there already included work to which an equal value is assigned. Moreover, the First Equal Pay Directive – fully complying with its role of instrument aimed at ensuring the implementation of the principle of equal remuneration – sets standards for Member States, that must “*abolish all discrimination between men and*

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<sup>22</sup> Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member

States relating to the application of the principle of equal pay for men and women

<sup>23</sup> The explanation is provided in case 69/80 Susan Jane Worringham and Margaret Humphreys v Lloyds Bank Limited (1981).

women arising from laws, regulations or administrative provisions which is contrary to the principle of equal pay” (Art. 3) and “take the necessary measures to ensure that provisions appearing in collective agreements, wage scales, wage agreements or individual contracts of employment which are contrary to the principle of equal pay shall be, or may be declared, null and void or may be amended” (Art. 4). Additionally, the Directive contains some general provisions regarding the effective access to justice that must be granted to employees who actually consider themselves victims of discriminations and the protection of such employees who have started legal proceedings against possible reaction (i.e. dismissals) by the employer. Of course, the state is required to intervene in the bud, taking “the measures necessary to ensure that the principle of equal pay is applied”.

A second Directive was implemented in 1976<sup>24</sup> with the aim of putting into effect the principle of equal remuneration “as regards to access to employment, including promotion, and to vocational training and as regards working conditions and social security” (Art. 1). This is known as the principle of equal treatment and is referred to both direct and indirect discrimination. Nonetheless, the Directive itself – in its Art. 2 – contains a closed system of exceptions, meaning that it provides a limited number of exceptions to the prohibition of direct discrimination based on gender, actually allowing derogations to the principle of equal treatment only in the cases defined *ex lege*. The first exception is referred to “occupational activities for which, by reason of their nature or the context in which they are carried out, the sex of the worker is a determining factor”; the second one is intended to guarantee the possibility to states to adopt protective measures to women in case of pregnancy – due to the particular physical state associated to this condition – and maternity – in order to protect the relationship between the mother and the new-born<sup>25</sup>. The third, and last, exception is

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<sup>24</sup> Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions

<sup>25</sup> Reasons expressed by the ECJ in the case 184/83, Ulrich Hofmann v Barmer Ersatzkasse (1984).

related to positive actions that states have to implement “*by removing existing inequalities which affect women's opportunities in the areas referred to in Article 1 (1)*”.

In December 1978 the Third Directive on equal treatment between men and women was adopted. It is specifically referred to “*the working population – including self-employed persons, workers and self-employed persons whose activity is interrupted by illness, accident or involuntary unemployment and persons seeking employment – and to retired or invalided workers and self-employed persons*” (Art. 2) and its scope is expressed in Art. 3, which clearly declares that the Directive itself applies to statutory schemes providing protection against sickness, invalidity, old age, accidents at work and occupational diseases, unemployment and social assistance, in so far as it is intended to supplement or replace the previous schemes. In this Directive there is a huge number of exceptions, listed in Art. 7: the two main ones are related to the determination of different pensionable ages for the two genders and to the accordance of specific advantages to people that had interrupted their careers in order to bring up children. Moreover, in Art. 4 it is reaffirmed the need for protecting women *on the grounds of maternity*.

### *The legislative activity of the eighties and the nineties*

In 1986, schemes that were not covered by the provisions approved in 1978, were introduced in the Directive on the principle of equal treatment in occupational social security schemes<sup>26</sup>: the categories to whom the Directive was applicable are the same of the Third Directive on equal treatment. Moreover, the Directive of 1986 – in its Art. 6 – gives a wide variety of examples of direct and indirect discriminations that are prohibited, such as “*setting different conditions for the granting of benefits of restricting such benefits to workers of one or other of the sexes or suspending the retention or acquisition of rights during periods of maternity leave or leave for family*

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<sup>26</sup> Council Directive 86/378/EEC on the implementation of the principle of equal treatment for men and women in occupational social security schemes

*reasons which are granted by law or agreement and are paid by the employer*”, just to cite two of them. Anyhow, the Directive also contains exceptions such as the fact that the non-discrimination obligation is not applied to survivors’ pensions.

The 1986 was also the year of another directive on equal treatment (Directive 86/613/EEC). Essentially, its aim was to ensure the *“application in the Member States of the principle of equal treatment as between men and women engaged in an activity in a self-employed capacity, or contributing to the pursuit of such an activity, as regards those aspects not covered by Directives 76/207/EEC and 79/7/EEC”* (Art. 1). According to Art. 2 of the Directive itself, it covers self-employed workers – which means that Member States have to *“take the measures necessary to ensure the elimination of all provisions which are contrary to the principle of equal treatment as defined in Directive 76/207/EEC, especially in respect of the establishment, equipment or extension of a business or the launching or extension of any other form of self-employed activity including financial facilities”* (Art. 4) – and their spouses *“not being employees or partners, where they habitually, under the conditions laid down by national law, participate in the activities of the self-employed worker and perform the same tasks or ancillary tasks”*.

The nineties have been characterized by the presence of two Directives related to parenthood. The first one is the Pregnant Workers Directive<sup>27</sup>, with the aim of implementing *“measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or who are breastfeeding”* (Art. 1). It contains provisions that are related to the principle of equal treatment between men and women: for example, it states that women benefit from health and safety protection and cannot be obligated to work during night hours. Moreover, they must be able to enjoy a period of at least 14 weeks’ maternity leave and during this period the *maintenance of a payment and/or entitlement to an*

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<sup>27</sup> Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding

*adequate allowance* must be ensured. In that respect, it must be noted that the European Court of Justice – in the judgement of 1998, *Caisse nationale d'assurance vieillesse des travailleurs salariés v Thibault*<sup>28</sup> – has given an extensive interpretation of the provisions contained in this Directive establishing that the worker has not only the right to return to the same or equivalent job, but also to benefit of any improvement to which she would have been entitled during the period of nonattendance.

The second relevant Directive of this decade is the so-called Parental Leave Directive<sup>29</sup>, with the aim of facilitating the reconciliation of work and family life and achieving *de facto* gender equality in everyday life. It establishes minimum standards to reach this goal and, essentially, implements the Framework Agreement of the European social partners on parental leave and time off. Member states are asked to guarantee “*an individual right to parental leave on the grounds of the birth or adoption of a child to enable them to take care of that child, for at least three months, until a given age up to eight years to be defined by Member States and/or management and labour*” (clause 2). When the leave ends, the worker has the right to come back to his/her job or, if not possible, to a job which is equivalent and coherent with their job contract.

### 2.3.3 The Treaty of Amsterdam

The promotion of equality between the two genders entered fully fledged in the collection of the essential tasks of the European Community in 1999, when the Treaty of Amsterdam was signed. Indeed, its Article 2 – while listing the tasks that the community shall promote by establishing a common market and an economic and monetary union – also refers to equality between men and women. Moreover, Article

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<sup>28</sup> ECJ 30 April 1998, Case 136/95 *Caisse nationale d'assurance vieillesse des travailleurs salariés (CNAVTS) v Evelyne Thibault*

<sup>29</sup> Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC



3 specifies that in all its activities<sup>30</sup>, “*the Community shall aim to eliminate inequalities, and to promote equality, between men and women*”. This paragraph is intended to require from both the Community and Member States to consider equality between the two genders while formulating and executing legislation in the forms of laws, regulations, policies and, in general, all activities. The concept of equality is reinforced and expanded also in Article 13, where it is stated that “*the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation*”. This latter Article has represented the legal basis for several directives against discriminations, namely the Directive on the principle of equal treatment between persons irrespective of racial or ethnic origin (2000/43/EC), the Framework Directive on equal treatment in employment and occupation (2000/78/EC) and the Directive on the principle of equal treatment between men and women in access to and the supply of goods and services (2004/113/EC).

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<sup>30</sup> The activities of the Community, as listed in Art. 3 (1), are the following: the prohibition, as between Member States, of customs duties and quantitative restrictions on the import and export of goods, and of all other measures having equivalent effect; a common commercial policy; an internal market characterized by the abolition, as between Member States, of obstacles to the free movement of goods, persons, services and capital; measures concerning the entry and movement of persons as provided for in Title IV; a common policy in the sphere of agriculture and fisheries; a common policy in the sphere of transport; a system ensuring that competition in the internal market is not distorted; the approximation of the laws of Member States to the extent required for the functioning of the common market; the promotion of coordination between employment policies of the Member States with a view to enhancing their effectiveness by developing a coordinated strategy for employment; a policy in the social sphere comprising a European Social Fund; the strengthening of economic and social cohesion; a policy in the sphere of the environment; the strengthening of the competitiveness of Community industry; the promotion of research and technological development; encouragement for the establishment and development of trans-European networks; a contribution to the attainment of a high level of health protection; a contribution to education and training of quality and to the flowering of the cultures of the Member States; a policy in the sphere of development cooperation; the association of the overseas countries and territories in order to increase trade and promote jointly economic and social development; a contribution to the strengthening of consumer protection; measures in the spheres of energy, civil protection and tourism.

Additionally, the Treaty of Amsterdam amended Art. 119 EEC, which was commuted into Art. 141 EC. The first two paragraphs of the Article remained equivalent, stating that “*each Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied*” and keeping unchanged the definition of pay specified by the provision of 1957; the novelty is represented by the addition of two paragraphs. According to the new-born paragraph 3, the Council – having previously consulted 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*”. Moreover, paragraph 4 specifies that “*the principle of equal treatment shall not prevent any Member State from maintaining or adopting measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers*”. This is referred to positive actions, which will be clearly defined only in the Directive 54 adopted in 2006<sup>31</sup>.

### 2.3.4 The Treaty of Lisbon

The Lisbon Treaty adopted an approach which was different from the one that has guided the previous Treaties: indeed, it did not make a total revision of the *acquis communautaire*, but it built on the existing one, as it was established by the Treaty of Rome and its successors. It basically confirmed a dual Treaty base, with the presence of the Treaty on the European Union (TEU) and of the Treaty on the Functioning of the European Union (TFEU). For what concerns the purposes of this dissertation, TEU is relevant where it adds the non-discrimination principle and equality between women and men to the values of the European Union (Article 2 TEU) providing a general framework against discrimination and equality between the two genders;

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<sup>31</sup> 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)

indeed, according to it, the Union “*shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child*” (Article 3 TEU). Moving to the Treaty on the Functioning of the European Union, it contains several provisions aimed at ensuring equality of treatment between men and women, even in the workplace. The first one is found in the first paragraph of Article 19 (ex Article 13 TEC<sup>32</sup>), where it is stated that “*the Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation*”. In addition – and this is even more relevant for the purposes of this dissertation – particular consideration must be given to Article 157 TFEU: this Article essentially replaces Article 119 EEC, as it was renumbered Article 141 EC. In that respect, it is important to notice that the Lisbon Treaty has kept almost all the characteristics of the Article as it was formulated and interpreted in the past. This means that Article 157 TFEU is directly applicable and includes broad definitions of “worker” and “pay”. Indeed, the text of the current provision follows the older version, stating that “*each Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied*” and reaffirming that “*pay means the ordinary basic or minimum wage of salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his employment, from his employer*”.

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<sup>32</sup> Article 13 of the Treaty on the European Community: “*Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation*”.

### 2.3.5 The Charter of Fundamental Rights of the European Union

The Charter of Fundamental Rights of the European Union represents the “written” Bill of Rights of the Union – in contrast with the “unwritten” one, which is constituted by the general principles of the EU included in the Treaties, hardly built and protected through the judgements of the European Court of Justice. It was signed in 2000 and at the very beginning of its life it was not legally binding, which essentially means that it imposed no formal obligations on the European institutions; it was the Treaty of Lisbon which made the Charter legally binding, meaning that since that moment all the institutions, organs and agencies of the EU, together with Member States, must observe the rights included in the Charter. It strengthens once again the prohibition of discrimination and the responsibility of Member States and the Union as a whole to guarantee equality between women and men in all areas. According to Article 21 of the Charter, *“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”*. Even more specifically, the Charter in its Article 23 states that *“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”*. In other words, the Charter is reinforcing the need for member States to guarantee equality of treatment but, at the same time, enforce positive actions aimed at encouraging equal opportunities and equal treatment on the workplace. The first paragraph of this latter Article is based on Article 2 and 3(2) of the EC Treaty, as replaced by Articles 3 and 8 of the TFEU plus Article 157 (1) TFEU. Likewise, Article 157 (3) of the same Treaty and Article 2(4) of Directive 76/307/EEC represent the basis of the second paragraph. Additionally, the Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at

work of pregnant workers and workers who have recently given birth or are breastfeeding, together with Directive 96/34/EC on the framework agreement on parental leave, represents the source for another article of the Charter itself, namely Article 33 on family and professional life. According to its second paragraph, “*to reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child*”.

### 2.3.6 The Directives of the new millennium

As previously mentioned, the Treaty of Amsterdam represented the legal basis for several directives. One of the most relevant ones is the previously mentioned Directive 2000/78/EC, the *Framework Directive on equal treatment in employment and occupation*. It sets minimum standards for Member States regarding the prohibition of any kind of discrimination on the grounds of religion, age, disability and sexual orientation. It covers employment and occupation, vocational training and membership of employer and employee organizations.

Another relevant directive of the new millennium has been adopted in 2002 in order to amend Directive 76/207 modernizing its provisions. The most important novelty of this Directive is the modernization of the content of the Directive on equal treatment of men and women in employment, together with the harmonization of the definition of direct and indirect discrimination to the same characterization as it was explained in other two anti-discrimination directives non-gender related: the Directive on the principle of equal treatment between persons irrespective of racial or ethnic origin (2000/43/EC) and the Framework Directive on equal treatment in employment and occupation (2000/78/EC).

In 2006 a new directive was adopted in order to clarify and incorporate in a single regulation all the provisions regarding access to employment and working conditions.

Indeed, the Directive 2006/54 – which is also known as the *Recast Directive* – includes the following Directives: 76/207, as amended by 2002/73; 86/378, as amended by 96/97; 75/117 and 97/80. Its text is divided into four titles: the first one regards general provisions such as the definitions of direct and indirect discrimination, and sexual and non-sexual harassment; the second title is about access to employment, equal pay and working conditions; the third one concerns – among the others – the promotion of equal treatment through social dialogue; the fourth title includes the final provisions. Specifically, Article 2(1) of the Recast Directive contains the definition of direct discrimination, which happens every time “*one person is treated less favourably on grounds of sex than another is, has been or would be treated in a comparable situation*”, and indirect discrimination, which occurs when “*an apparently neutral provision, criterion or practice would put persons of one sex at a particular disadvantage compared with persons of the other sex, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary*”. For what concerns direct discrimination, the ECJ has stated that cases of pregnancy represent a special category, meaning that in such circumstances a comparison among different situations is not required: in case an employer refuses to appoint a woman because she is pregnant, this is a form of direct discrimination, which is prohibited according to Article 2(2)(c) of the Recast directive itself. Therefore, in case the motivation for not hiring a woman is related to her pregnancy, the fact that there are no male candidates is not considered relevant. Regarding indirect discrimination, it is referred to all the cases in which “*an apparently neutral provision, criterion or practice would put persons of one sex at a particular disadvantage compared with persons of the other sex, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary*”. The concept of indirect discrimination has been settled thanks to several judgements of the European Court of justice and in particular through the *Bilka* case<sup>33</sup> which

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<sup>33</sup> ECJ 13 May 1986, Case 170/84 *Bilka–Kaufhaus GmbH v Karin Weber von Hartz*.

helped to develop the indirect discrimination test. According to it, it is necessary to answer to a first main question: does the measure disadvantage more significantly one gender than the other? The applicant has the burden of proof in that respect and, if the answer to the question is affirmative, the defendant has to provide a justification. The action is considered justified when evidences are provided in order to explain why the aim is legitimate and the measures are appropriate and necessary to pursue the goal itself. The Recast Directive in its Article 3 also contains the definition of positive action, which is referred to “*measures within the meaning of Article 141(4) of the Treaty with a view to ensuring full equality in practice between men and women in working life*”. That Article is, in practice, referred to all those actions that member states have to implement in order to eliminate the prejudices against women in employment and, in general, to ensure a full equal treatment of the two genders all along the working life of individuals, from selection and recruitment to promotions, passing through equal remuneration. Moreover, the same Directive clearly prohibits harassment – defined as the “*unwanted conduct related to the sex of a person occurs with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment*” – and sexual harassment – defined as “*any form of unwanted verbal, non-verbal or physical conduct of a sexual nature, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment*”.

Other significant directives of recent times were adopted in 2010. The most relevant one – both in terms of consideration of the public opinion and in terms of concrete repercussions – is the Directive 2010/18, known as the new Parental Leave Directive. It incorporates the revised version of the *Framework Agreement on Parental Leave* aimed at adapting its content to the changing needs of the society in order to better reach the goal of conciliating work and family duties. For example, it introduces one month of additional leave and takes in consideration the new family structures and the specific needs of parents of children with disabilities. Particularly relevant for the

purpose of this dissertation is the analysis of Clause 5 of the revised Framework Agreement, which regards employment rights and non-discrimination. The general instruction – as it was in the past – is that the worker has the right to return to the same job he/she was performing before the leave or, if not possible, “*to an equivalent or similar job consistent with their employment contract or employment relationship*”. Moreover, the worker maintains all the social security schemes during the period of parental leave and he/she is protected against dismissal: indeed, according to Clause 5.4: “*Member States and/or social partners shall take the necessary measures to protect workers against less favourable treatment or dismissal on the grounds of an application for, or the taking of, parental leave in accordance with national law, collective agreements and/or practice*”. Additionally, Clause 6 ensures the possibility for the worker to request changes to the working hours for a set period of time when returning from parental leave: these flexible arrangements are possible due to a constant contact that must be maintained between the employee and the workplace during parental leave.

### 2.3.7 The gender mainstreaming strategy: a comprehensive approach

A part from the legislation *stricto sensu*, European Union is involved in a number of initiatives aimed at ensuring gender parity and equality of treatment even in the workplace. These initiatives exist in the framework of the gender mainstreaming strategy – already established at international level. It is a strategy intending to reach gender equality through the creation, implementation, monitoring and evaluation of policies aimed at promoting equality between the two genders. According to the European Institute for Gender Equality, “*a political commitment for gender equality and a compatible legal framework are the basic conditions for the development of a successful gender mainstreaming strategy*”. In other words, a plan is necessary in order to reach the objective taking into consideration the context, the methods and the responsible bodies. According to the same Institute, gender mainstreaming is



composed by two, equally relevant, dimensions: the gender representation in policy areas and the gender responsive content of the policies themselves. The 1996 was the year of the official commitment of the European Commission to gender mainstreaming: the approach was “dual”, involving the gender perspective in all policies and – at the same time – implementing specific measures to eliminate or at least reduce gender disparities. The Amsterdam treaty represented a milestone in this sense due to the introduction of the principle of equality between women and men among the essential tasks of the Union, even if the first Resolution – containing a formal commitment to regularly implement measures for gender mainstreaming – was adopted in 2003. Moreover, in 2006 the *Roadmap for equality between women and men* was adopted: it included – together with the eradication of all forms of violence, the elimination of gender stereotypes and the promotion of gender equality in external and development policies – key actions in the areas of equal economic independence, reconciliation of private and professional life, equal representation in decision-making. In particular, for what concerns the achievement of equal economic independence for women and man, its Part I includes a specific article on gender pay gap, which specifies that “*tackling these issues requires a multifaceted approach and the mobilisation of all parties*”. A further step forward was made in the same year, when the First European Pact for Gender Equality was adopted by the European Council. The Pact was renewed in 2011, within in the bigger framework of "Europe 2020", the European Union's new strategy for jobs and smart, sustainable and inclusive growth. It aims at raising to 75% the employment rate for women and men aged 20-64, which – according to the Conclusion 5 at the beginning of the document – means “*it is necessary to give priority to addressing barriers to women's participation in the labour market when implementing the Strategy*”. In Article 1 of the Pact, the Union commit itself to “*close the gender gaps in employment and social protection, including the gender pay gap [...], especially in three areas of great relevance to gender equality, namely employment, education and promoting social inclusion in particular through the reduction of poverty, thus contributing to the growth potential of the European labour force*” and to “*promote better work-life*

*balance for women and men throughout the life-course, so as to enhance gender equality, increase women's participation in the labour market and contribute to meeting the demographic challenges*". Specific measures to combat gender segregation in the labour market include the promotion of women's employment also through the fight against all forms of discrimination; the elimination of gender stereotypes and the promotion of gender equality at all levels of education and training, in order to reduce gender segregation in the labour market; the assurance of equal pay for equal work and work of equal value; the encouragement of social partners and enterprises to develop and effectively implement initiatives in favour of gender equality; the promotion of equal participation of women and men in decision-making at all levels and in all fields, in order to make full use of all talents. Furthermore, the *Strategic Engagement for Gender Equality*, set in 2016, promote actions in five areas: equal economic independence for women and men; equal pay for work of equal value; equality in decision-making; dignity, integrity and ending gender-based violence; promoting gender equality beyond the EU.

### 2.3.8 The essential role of the European Court of Justice: some emblematic judgements

At the end of this excursus on European legislation, it is necessary to make a brief and concise structured analysis of some emblematic cases judged by the Court of Justice. Indeed, next to some cases already mentioned in the previous paragraphs – see, for example, the Defrenne case – there are other judgements that represent milestones in the path to achieve equal opportunities between the two genders. The first relevant selected judgement is the Bilka case, concerning a department store which refused to pay pensions to part-time employees. This practice was challenged because considered contrary to the principle of equal pay, indeed it was systematically disadvantageous for female workers, who tend to work part-time more often than their male counterparts due to family duties. The Bilka case is particularly

relevant because is the first case in which the ECJ has recognized the presence of a form of indirect discrimination based on gender: the Court stated that the policy applied by the employer was contrary to the principle expressed in Art. 119 of the Treaty of Rome and that *“only objectively justified economic grounds fall within the scope of the factors that could be used to justify discrimination”*. As already explained in this dissertation, the Bilka case is relevant also because it allowed the ECJ to establish a test in order to find such *“objectively justified criteria”*: actually – as previously clarified – according to this judgement, there is an objective justification for such behavior of the individual employer when the measures taken *“correspond to a real need on the part of the undertaking, are appropriate with a view to achieving the objective in question and are necessary to that end”*. Another relevant test has been developed in the judgement of the Seymour-Smith case<sup>34</sup> – in which a woman working as a secretary was dismissed unfairly by her employer and her claim was refused because she did not meet all the requirements of the national legislation: in this case, the test is valid for *“statutory employment provisions of member states”* and is considered satisfied when the unfavorable legislative provision is necessary to pursue an essential goal of a specific social policy.

The Marschall<sup>35</sup> case – regarding a tenured teacher who applied for a promotion that in the end was given to another female candidate, equally qualified – represents the first judgement in which there is a switch from the basic concept of equal treatment to the one of positive actions. According to the ECJ *“even where male and female candidates are equally qualified, male candidates tend to be promoted in preference to female candidates particularly because of prejudices and stereotypes concerning the role and capacities of women in working life, and the fear, for example, that women will interrupt their careers more frequently, that, owing to household and family duties, they will be less flexible in their working hours, or that they will be*

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<sup>34</sup> ECJ 9 February 1999, Case 167/97 Seymour-Smith v Secretary of State for Employment

<sup>35</sup> ECJ 26 February 1986, Case 409/95 Marshall v Southampton and South West Hampshire Area Health Authority

*absent from work more frequently because of pregnancy, childbirth and breastfeeding. For these reasons, the mere fact that a male candidate and a female candidate are equally qualified does not mean that they have the same chance*". Considering this assumption, the Court clarified that member states "may maintain or adopt measures within the meaning of Article 141(4) of the Treaty with a view to ensuring full equality in practice between men and women in working life". In other words, member states are allowed and may create the right conditions so that the benefit of a disadvantaged group of people – women, in this case – is promoted. The interesting aspect about this case is that it highlights the issue of the so-called *positive discrimination*, which occurs when the principle of equality is actually infringed in order to create the more favourable conditions for the disadvantaged group. The ruling of the Court, in that respect, said that "a national rule in terms of which, subject to the application of the saving clause [that women are not to be given priority in promotion if reasons specific to an individual male candidate tilt the balance in his favour], female candidates for promotion who are as qualified as the male candidates are to be treated preferentially in sectors where they are under-represented may fall within the scope of Article 2(4) [of Equal Treatment Directive] if such a rule may counteract the prejudicial effects on female candidates of the attitudes and behaviour [...] and thus reduce actual instances of inequality which may exist in the real world". The same line was followed in Badeck case<sup>36</sup>, regarding the conditions of access and promotion for women and their working conditions.

The principle of equal pay was interpreted in the Brunnhofer case<sup>37</sup>, where the ECJ stated that to be sure that the employees can be considered in a comparable situation it is necessary to evaluate a number of factors including the nature of the work, the training requirements, and the working conditions. In other words, the same category of classification of the work under the applicable collective agreement is not

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<sup>36</sup> ECJ 28 March 2000, Case 158/97 Badeck's application

<sup>37</sup> ECJ 26 June 2001, Case 381/99 Susanna Brunnhofer v Bank der österreichischen Postsparkasse AG

sufficient. Considering these premises, some issues were raised regarding some elements that in certain cases have been considered an adequate justification for unequal treatments at work, such as qualifications. In that respect, the ECJ judged the *Angestelltenbetriebsrat* case<sup>38</sup>, in which ruled that if workers perform the same occupation with different qualifications, in reality is possible to consider them as performing different works. One year later, in 1998 *Örebro*<sup>39</sup> case, the Court followed a different line stating that the comparison must be done between the different elements of the salary, that means compare the basic monthly salary of a male worker with the basic monthly salary of a female worker performing the same activity. Another issue is related to mobility, seniority training and length of service. According to the judgement of the *Danfoss* case<sup>40</sup>, these elements must be considered separately. The mobility criterion is considered neutral in itself but cannot be applied when its application systematically disadvantages women, while for what concerns the length of service, the Court states that *“since length of service goes hand in hand with experience and since experience generally enables the employee to perform his duties better, the employer is free to reward it without having to establish the importance it has for the performance of specific tasks entrusted to the employee”*: the impression here is that the length of work is assimilated to experience. The opposite line was followed in the *Hill and Stapleton* case<sup>41</sup>, where the ECJ disconnected experience from the length of service, states that the usage of the actual length of time worked must be justified through objective criteria and declares that *“Community policy in this area is to encourage and, if possible, adapt working conditions to family responsibilities. Protection of women within family life and in the course of their professional activities is, in the same way as for men, a principle*

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<sup>38</sup> ECJ 11 May 1999, Case 309/97 *Angestelltenbetriebsrat der Wiener Gebietskrankenkasse v Wiener Gebietskrankenkasse*

<sup>39</sup> ECJ 30 March 2000, Case 236/98 *Jämställdhetsombudsmannen v Örebro läns landsting*

<sup>40</sup> ECJ 17 October 1989, Case 109/88 *Handels- og Kontorfunktionærernes Forbund I Danmark v Dansk Arbejdsgiverforening, acting on behalf of Danfoss*

<sup>41</sup> ECJ 17 June 1998, Case 234/95 *Kathleen Hill and Ann Stapleton v The Revenue Commissioners and Department of Finance*

*which is widely regarded in the legal systems of the Member States as being the natural corollary of the equality between men and women, and which is recognised by Community law”.*

As stated in the 2013 Report on EU gender equality law by the European Commission, *“the progressive realisation of the equal treatment of women and men is certainly not only an achievement of the EU. Other international instruments, for instance, have no doubt also contributed to the adoption of equality legislation at the national level and the eradication of gender discrimination”.* Nevertheless, considering these cases – that are just some examples taken from the enormous amount of judgements regarding the issue of gender discriminations at work – it is clear that the contribute given by the European Court of Justice to the cause of gender equality in the labour market and in the workplace is huge and has been essential to achieve the current level of equality.

## 2.4 National intervention: the Italian case

The history of Italian legislation on women's work can be roughly divided into three periods. The first one is characterized by regulations aimed at protecting women's work: protective legislation dates back to the beginning of the twentieth century; new laws, more intensely protective than the previous ones, were issued during the twenty years of fascism. The fascist ideology regarding women and their role in society is summarized in the “demographic campaign”, with which the regime aimed to achieve a strong increase in the birth rate. The demographic expansion was considered as an essential precondition of the policy of colonial expansion of Italy. In this policy, women’s role was to give birth to children, look after the house and the husband. It was not excluded, of course they had to work, but the extra-domestic work of women was tolerated only if necessary to supplement the income of the male head of the family. The second period starts with the enter into force of the Constitution, which introduces – among the others – the basic concept of equality of all citizens. The last

period in the history of Italian legislation on women's work begins with the law of 9 December 1977, N° 903. The law on equal treatment of men and women regarding work has changed the traditional set of legislation in that field, inspired by the anti-discrimination legislation in force in other countries. This last period has laid the foundations for the modern antidiscrimination intervention, founded on the awareness that, although protected by antidiscrimination and facilitated by positive actions, the "different" subjects continue to remain as such. The goal is therefore to draw a labor law that is able to respect and value all the diversity

Considering this introduction, the purpose of this section is to focus on the Italian legislative framework, providing an overview of the intervention aimed at addressing the issue of gender disparities in wages and, generally speaking, in the labour market.

#### 2.4.1 The Italian Constitution: a starting point for further improvements

The basic principle of equality, together with the prohibition of discrimination and the possible judicial actions, is contained in the Italian Constitution of 1948, which represents the fundamental law of the Italian State and occupies the top of the hierarchy of sources in the legal system of the Republic. Its Article 3 recognizes the right to equality as a fundamental right of the human person: *“All citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinions, of personal and social conditions”*. Moreover, the second Clause of the same Article can be considered a reference to positive actions, where it declares that the Republic must *“remove the economic and social obstacles that – limiting the freedom and equality of citizens – prevent the full development of the human person and the effective participation of all workers in political, economic organization. and social life of the country”*.

Additionally, Article 37 states that “*the working woman has the same rights and, for the same job, the same salaries as the worker. Working conditions must allow the fulfilment of his essential family function and ensure special protection for the mother and child*”. In that respect, it is necessary to notice that – one more time – the male worker is the subject, the figure of reference on which the disadvantage to be filled is measured to have no discrimination. The way in which the *working woman* and the *worker* are named here is something more than just sexual connotation: on the one hand there is the working woman, on the other, simply, the worker. The female subject has a double appearance: on the one hand she is included in the public sphere and assimilated to the male mode, on the other hand she is identified, because of her gender, into an *essential caring role*. If compared to it, work is always just an addition, a secondary element in terms of time, meaning and value. What characterizes the woman, seen as a gender, with respect to the individual holder of rights - worker and citizen - is the familiar and maternal function that she is called to perform. The word “function” evokes the idea of a task and, even before, of a *necessary service*, functional to a higher order that is not questioned as such. Starting from these considerations, it is easy to understand that the Constitution reflects the traditional vision of women, being also the result of the claims coming from the feminist associations and movements of the first half of the 20th century, focused on the so-called “female question”: work, need to guarantee rights for all, equal pay for equal work, social value of motherhood, and therefore a request for protection from the State and the industry. Article 37, at a critical review, appears to involve the typical contradiction that the Italian feminist Annarita Buttafuoco defined as “the incongruity” of Italian emancipation<sup>42</sup>: the claim of the rights of women based on the same “maternal nature” that had been the reason of their exclusion from the same rights and their “unfinished inclusion”, used to keep them in a state of legal, social and political minority. The caring and “familiar” function of women was the essential requirement on which women demanded the full implementation of rights and

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<sup>42</sup> Buttafuoco A. (1997) “*Questioni di cittadinanza, donne e diritti sociali nell'Italia liberale*”, Siena, Protagon



maternity remained the hallmark of female identity. What is proposed is just a reversal: sensitivity becomes the strong point, the founding value on which to redefine the structure of social relationships. The distinction between the woman and the mother, the idea that the move from the “female question” to the analysis of the relationship between men and women involves “*tackling the basic points of society in general*”<sup>43</sup> makes its way only with the feminism of the seventies. As Maria Luisa Boccia wrote in her book “The Political Difference”<sup>44</sup>, the concept of equality as it was intended by the emancipation movements asks women to deprive themselves of their differences in public life and to take them back on in the private sphere. Feminism realizes that in this way the relationship of power between the two genders is not affected, because its basic structure – dualism – persists.

The Constitution belong to a specific historical, social, cultural context and reflects the vision of the dominant world at that time. Now, the essential question to be asked, forty years after that spread of historical consciousness that was the feminism of the seventies, is how much the representation of the woman – of the relationship between the genders - appears in the Article 37, corresponds to the reality. It is profoundly changed, both because the boundaries between private and public are blown, and because women – even though with so many ambiguities and contradictions – are no longer willing to confuse themselves with the interests of the family, being just “the mother of” and “the wife of”. It is now necessary to “move to another level”, to rethink politics starting from all that was considered "non-political", to start the story “having the woman as a subject”, in its singularity and plurality, and not just as a function, resource, the added value of that one protagonist in the history that has been men so far.

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<sup>43</sup> Quote by Rossana Rossanda, Italian left-wing politician and journalist, founder of the party and newspaper “Il manifesto”.

<sup>44</sup> Boccia M. L. (2002) “*La differenza politica*”, Il Saggiatore

## 2.4.2 The first legislative measures: the protection of maternity

Following the same old philosophy that had led to the writing of Article 37, the first legislative measures defending female workers were strictly related to the protection of the woman because of her role of wife and mother. The most relevant intervention in that respect is Decree N° 860, approved in 1950<sup>45</sup>, and concerns the *Physical and economic protection of working mothers*: it intends to provide adequate protection actually prohibiting to employers the dismissal – or the application of other penalties – to the working woman who faces the experience of motherhood. It applied “*to pregnant workers and workers who have recently performed their work to private employers, including agricultural workers, [...] as well as to those employed by the offices or companies of the State, Regions, Provinces, Municipalities and other public bodies and Cooperative Societies, even if they are members of the latter*” and – taking in consideration another old, royal provision of 1934<sup>46</sup> – prohibited to the working woman to carry out heavy labours not only in the three months preceding the estimated date of birth, but also during the breastfeeding period, for a maximum of seven months: during this period, there is the obligation to reassign the woman and let her perform other tasks, according to her condition. Apart from that, the most important novelty introduced by this law is the prohibition of dismissal of a woman just because she is pregnant: the prohibition applies not only during the pregnancy, but also during the eight weeks following the birth of the baby, which are a period in which, for mothers, is compulsory to be absent from work. The worker, passed eight weeks after the birth, can also decide to abstain from work for a period of six months during which she will maintain her role and all the effects of seniority.

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<sup>45</sup> L. 26 August 1950 N. 860, “*Tutela fisica ed economica delle lavoratrici madri*”.

<sup>46</sup> Royal Decree 22 March 1934 N. 654

### 2.4.3 The seventies: the role of collective agreements and the formal concept of equality

Considering that the initial approach of the legislator tended to consider the maternal role of the woman before her working function, it is easy to understand why the measures strictly correlated to female occupation in itself – and not connected to their traditional caring role – have required far more time. More than that, it is essential to notice that the legislative achievements will be the consequence of the action of other subjects. Particularly relevant in this sense was the *interconfederal agreement for the industrial sector* signed in July 1960, which will have brought to the abrogation of the differences in the professional status of women and men<sup>47</sup> and to the abolition of the disparity in the computation of the “contingency point”<sup>48</sup> for the two genders, with a reduction of 15% of the pay gap in those years. This interconfederal agreement was inspired by a similar older one stipulated in February 1960 for the textile sector; while in the agricultural sector, on the other hand, the equality of retribution was reached in 1964 with the abolition of the so-called “Serpieri coefficient”, according to which – given the value of a working day of a man equal to 1 – the working day of a woman, with the same working hours, was equal to 0,60. However, the new contractual rules fully reflected the occupational segregation system which – until 1975 – would have concentrated 75% of the female labor force in less than 15% of the occupations. In addition, “feminine” jobs were characterised by the lowest salary levels and many collective agreements established reductions of the retribution in case of women performing traditionally “masculine” jobs. Trade unions appeared satisfied by these achievements that eliminated only the obvious forms of discrimination, making it clear that the achievement themselves were not the result of a concrete structural review of the way in which work was evaluated, but just the

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<sup>47</sup> Here the expression “professional status” refers to the Italian “inquadramento professionale”, indicating the worker’s position in a profession, compared to the one of the other workers.

<sup>48</sup> Here the expression “contingency point” represents the literal translation of the Italian “punto di contingenza”, namely the amount paid to the worker each time an increase in the cost of living was determined, according to the “escalator” mechanism. It was introduced in 1945 and lasted until 1992, the year in which it was abolished.

outcome of policies aimed at protecting the lower wage earners. Despite these discourses concerning the ratio behind some accomplishments, it is undeniable – as already affirmed at the beginning of this paragraph – that the unions' activity has laid the foundations for the gradual process of wages equalisation between the two genders.

On February 9, 1963 the Italian Parliament approved the law N° 66, a short act stating that “*the woman can access all offices, professions and public jobs, including the Magistrature*”, but it will be necessary to wait until 1977 to have the first, clear, unequivocal definition of equality. The law 903/77, entitled “*Parity of treatment between men and women in the field of employment*” defines, together with equality, the concept of discrimination, and removes some previous protection regulations that could have been prejudicial to achieve equality, excluding maternity, night work and heavy work. This law, called the “equality law” aims to reverse the traditional perspective of protection and to implement equal treatment, in accordance to European legislation. Regarding access to employment, Article 1 of the law gives women the right to compete freely and without restriction on the labor market. Any discrimination on grounds of gender is prohibited, whatever the sector of activity, and the level of the professional hierarchy. The prohibition of discrimination concerns both direct discrimination, such as the reference to marital status or pregnancy, and indirect discrimination. For the latter – the most difficult to prove – the law refers only to discriminations implemented through pre-selection mechanisms, through the press or through other forms of advertising. The doctrine, however, believes that the list is only an example, and that the notion of indirect discrimination embraces all those selection criteria, apparently neutral – such as the references to stature or weight – which, in substance, tend to save work for men only (or women only). The reference expressed to the worker's gender is allowed only in specific sectors, such as fashion and entertainment, where belonging to a given sex is essential for the performance of the work. Any discrimination on grounds of gender is also prohibited in guidance and professional training. Restrictions on working hours and shifts, now

equal for women and men, are also repealed. The law n. 903/1977 also introduced special measures aimed at reducing the negative consequences that female workers suffer due to the double responsibility of the family and extra-domestic work. The most significant of these measures extends to the working father, as an alternative to the mother, the right to be absent from work to provide care and assistance to the ill children (under three years old). This norm seems a faint attempt of the legislator to promote a more equal distribution of family duties between men and women. However, the modest practical results show once again that childcare is still considered a task and a duty of women.

#### 2.4.4 Steps towards the substantial equality: the law N° 125 of 1991 and further relevant improvements

The legislative intervention explained in the previous paragraph was inspired by a merely formal concept of equality. In 1991 the legislator changes its perspective adopting the law N° 125, which extended the legal protection through regulatory tools and techniques appropriate to the substantive reasons for gender discrimination. Indeed, in its Article 4 – implementing the relevant European legislation – this law provides a general notion of direct and indirect discrimination. The current text, transposed in Art. 25 of the Decree N° 198 of 2006 – namely the *Code of Equal Opportunities between Men and Women* – clearly explains the notion of direct discrimination, defined as “*any act or pact or behaviour that produces a detrimental effect, discriminating against workers because of their gender*”. Therefore, the objective of the perpetrator of the act is irrelevant, indeed the discrimination could result from the application of rules of a collective agreement and even by law. Moreover, thanks to the reform, the same article now admits and considers the possibility that unfavourable treatments could also happen against male workers. The original text of the law offered a definition of indirect discrimination, stating that “*it constitutes indirect discrimination any unfair treatment resulting from the adoption of*

*criteria that proportionately disadvantage the workers of one or the other sex and concern requirements that are not essential to the performance of 'working activity'.* This notion has been modified after the implementation of Directive 2002/73: according to the new version of the article, indirect discrimination occurs when a seemingly neutral disposition, criterion, practice, act, pact or behavior puts or can put workers of a particular gender in a position of disadvantage if compared to workers of the opposite one. Therefore, also criteria that are neutral in themselves can be considered discriminatory: the particularly disadvantageous consequences produced, even if only potential, are assimilated to those directly discriminatory. That said, the provision gives the employer the possibility to provide a justification for unequal treatments based on objective reasons, since they depend on the application of an apparently neutral criterion. More than that, Decree 145/2005 amended the law of 1991 involving under the cover of the antidiscrimination protection also the cases of harassment and sexual harassment<sup>49</sup> in the workplace, that today are recognized as a form of gender discrimination. In case of violation of the principle of non-discrimination, the discriminatory act – or pact – is considered invalid. A particular mention is deserved by the case of discriminatory dismissals: in this situation the reinstatement of the worker in her – or his – position is provided regardless of the number of workers employed by the employer. Also, after the introduction of the law 92/2012 – the reform of the labor market – the legislator has maintained the full reintegration protection, indeed the worker who is discriminated has the right to be reintegrated into the workplace and to receive a full compensation for the damage suffered.

Furthermore, in the law N° 125, a crucial role is played by the measures defined “positive actions for women”, which *can* be adopted in order to remove the obstacles

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<sup>49</sup> According to Article 4 itself, sexual harassment is defined as the complex of “*unwanted behaviors with a sexual connotation expressed in physical, verbal or non-verbal form, having the purpose or effect of violating the dignity of a worker creating an intimidating, hostile, degrading, humiliating or offensive climate*”. The jurisprudence includes, among the harassing sexual behaviors in the workplace, allusive appraisals, sexual jokes, slanting dinner invitations, continuous phone calls with constant sexual repercussions, kissing or others approach.

that actually prevent the realization of equal opportunities. They are designed to be applied only to women, with the aim of achieving substantial equality between the two genders and promoting female employment by affecting women's disadvantages in the labour market – not only concerning pay, but also in access to work, career development and inclusion in certain professional sectors and at certain levels of responsibility – and removing the most significant obstacles which concretely prevent women from reaching the full equality – e.g. in professional training and work organization. In this sense, positive actions can also be considered – as previously explained – a direct consequence and a concrete application of the second Clause of Article 3 of the Italian Constitution. According to the same law of 1991, positive actions have the following objectives: eliminate disparities in education and vocational training, access to employment, career progression, working life and mobility periods; promote the diversification of women's professional choices, in particular through school and professional guidance and training tools; promote access to self-employment and entrepreneurial training and the professional qualifications of self-employed women and entrepreneurs women; overcome conditions that cause different effects on workers of different genders; promote the integration of women into the activities, professional sectors and levels in which they are under-represented – in particular in the technological sector and at higher levels of responsibility; encourage, also through a different organization of work, the balance between family and professional responsibilities and a better distribution of these responsibilities between the two genders. The matter of positive actions has raised another issue related to the possible introduction of a reserved quota to hire or promote women in cases of underrepresentation. Actually, in 2011, with the law N° 120 – Golfo-Mosca law – the so-called “pink quotas” become reality: it introduced the temporary obligation to respect a fair gender representation in the boards of directors and boards of statutory auditors of listed and publicly owned companies. The proportion of gender representation is set at 20% for the first term and 33% for the next two. The law has a temporal validity of only ten years, within which it is hoped to achieve the objective of removing the obstacles that so far have limited

women's access to leadership roles, encouraging a process of cultural renewal to support meritocracy and growth opportunities. The goal is to need no more law and, since 2023, to overcome the gender perspective, hiring those people who have the most appropriate characteristics for the specific role, man or woman.

## 2.4.5 The Code of Equal Opportunities between Men and Women

Already mentioned in the previous paragraph, the Code of Equal Opportunities between Men and Women – namely Decree N° 198 of 2006 – is the text that has got together all the legislation in force related to equal opportunities and is divided into four books. The first one includes all the legislation regarding the general promotion of equal opportunities between men and women: here there are the rules governing the functioning of the “equality bodies”. The second book concerns equal opportunities in social-ethical relations, while the third one contains legislation on equal opportunities in economic relations: this is the area concerning legislation addressing gender-based discrimination in the workplace, harassment and sexual harassment. The fourth and last book concerns equal opportunities in political and civil relations.

The third book is the one that contains the greatest number of provisions. Together with the definitions of direct and indirect discrimination contained in Article 25 – and already explained in the previous paragraph – the most relevant article for the purposes of this dissertation is Article 28, which contains the concept of the prohibition of pay discrimination. This article, once again, refers to the original law of 1977 and states that the female worker is entitled to receive the same salary as her male colleague performing the same job or a job of equal value. In light of this, it is evident that the Italian legislator considers the gender pay gap as a “piece” of a bigger



picture composed by many possible forms of discriminations<sup>50</sup> than can affect the female worker. The reality is that gender pay gap is just one of the many forms that the gender gap in the workplace can take and the legislator itself has set up its activity trying to intervene on the whole structural problem, innate in culture and history.

### *Equality Bodies*

The Code of Equal Opportunities, in its first part describes the rules governing the so-called “equality bodies”. These equality institutions form a complex and articulated system, even if they are not always completely effective in creating conditions of equality for women. Article 3 of the Decree defines the *Commission for Equal Opportunities for Men and Women* stating that it is “set up by the Department for Equal Opportunities and provides the Minister for Equal Opportunities with advices and technical-scientific support in the development and implementation of equal opportunities policies between man and woman”. The current Commission for Equal Opportunities between men and women, dependent on the Ministry of Equal Opportunities, is the result of the transformation happened due to the Decree of 2006. Indeed – at the very beginning, in 1984 – the National Commission for Equal Opportunities was established to respond to the recommendations contained in the action program adopted in Copenhagen by the Second United Nations World Conference on Women. Subsequently, the Commission has been defined in the roles, competences, composition, duration, financial availability by law N° 164 of 1990. Additionally, in Article 8 there is the definition of the “*National committee for the implementation of the principles of equal treatment and equality of opportunities between female and male workers*”. It “promotes, within the jurisdiction of the state, the removal of gender-based discriminatory behaviours and any other obstacle that actually prevent the full equality between men and women in accessing work and at work”. Another relevant position is the one covered by the Equality Councillor. It has

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<sup>50</sup> The forms of discrimination identified in the Decree are in access to work, remuneration, work performance and career, access to social security benefits, access to public employment, enlisting in the armed forces and in special bodies and, in general, military careers.

been introduced with Law N°125 of 1991, which also set its role: protect the condition of women in the labour market. With the Code of Equal Opportunities, the discipline regarding the Councilor has been changed and unified: Equality Councilor – at national, regional and local level – promote and control the implementation of the principles of equal opportunities and non-discrimination between women and men in the workplace. They – among the other activities – investigate on the imbalances between genders, promote positive actions and verify that the local development programs are coherent with the institutional guidelines on equal opportunities. Moreover, according to Article 22, the intervention planning and the activities of research and information on female entrepreneurship are carried on by the *Committee for Female Entrepreneurship*.

#### 2.4.6 The jurisprudence of equal opportunities: an example

For the sake of completeness, this last paragraph will be dedicated to the explanation of a jurisprudential case. The aim is to provide an example to stimulate reflection in the reader regarding one of the many forms that discrimination can assume and to highlight a particular case in which provisions that are apparently neutral can be, in reality, discriminatory. The case<sup>51</sup> has been judged by the Tribunal of Turin in 2016 and concerns the dispute between five women employed at the GTT – a company part of a holding providing public transports in Turin – and the company itself. The case started because, while computing the bonus, the employer did not consider absences due to pregnancy, maternity leave, parental leave and leaves for children's ills like they were effective presence in service, as it was prescribed by the law. It was, therefore, necessary to establish whether the exclusion from the computation of the absences for maternity leave, parental leave and sickness for children constitutes a form of direct or indirect discrimination based on gender. The criterion adopted by the defendant company to establish the amount of the performance bonus, at first

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<sup>51</sup> Tribunal of Turin October, 26 2016, N° 1858 - Filicetti *Est.* - S.M. and others vs. GTT S.p.A. in consultation with Equality Councilor of the Piemonte Region.

sight, appears neutral since it aims to dissuade absenteeism and reward the employees who during the considered period were not absent from work or have made a small number of absences. In fact, each block of absences corresponds to a percentage attribution of the variable portion of the performance bonus, gradually decreasing. What is relevant for the purposes of this proceeding – and of this dissertation – is that the data regarding the fruition of the leaves to take care of young children show that – due to the existence of lasting traditional culture with clearly identified family roles based on gender – leaves themselves are used mainly by women. This creates a situation in which the apparently neutral criterion used by the employer, in the end, actually penalized women, posing them in a systematic disadvantaged condition if compared to the male workers or female workers with no children to take care of. The Court in its judgement starts to consider Art. 119 of the Treaty of Rome (then Article 141 of the TEC and now Article 157 of the TFEU) as it states that member states have to “*guarantee the application of the principle of equal pay for men and women for the same job*”. The concept of remuneration according to the Court of Justice, includes – as previously said in this chapter – not only the basic or minimum salary, but also the individual increases, the increases due to seniority that are added to the minimum treatment, the monthly supplementary salary allowances, fringe benefits and bonuses. It is also necessary to consider Decree 198/2006 not only because it gives the definition of direct and indirect discrimination, but also because in its Article 25 it states that “*any treatment that is less favourable because of the state of pregnancy as well as maternity or paternity, even adoptive*” can be considered a discrimination. As specified in Directive 95/85 “*pregnant workers who have recently given birth or are breastfeeding are in a specific situation of vulnerability so that they have the right to maternity leave, but their situation, in particular during such leave, cannot be considered equal to the one of a male or female worker who is absent from work due to illness*”. In general, the principle of equal treatment and the prohibition of discrimination requires that similar situations are not treated differently and that different situations are not treated in the same way, unless such treatment is objectively justified. Considering this assumption, the contractual provisions of this

proceeding are considered discriminatory because they treat identically situations that, in relation to the function of maternity leave and parental leave, are not comparable to those resulting from other causes of absence from work and this treatment is not objectively justified. Once having verified the discriminatory nature of the employer's behavior, the Court obliged the defendant to pay an amount equal to the difference between the amount paid to the applicants as a result bonus and how much they should have received. At the same time, by accepting one of the questions made by the Regional Equality Councilor, the judge condemned GTT to define and implement a plan to remove the established discrimination, requesting that the company agree with the union representatives' new criteria for determining the result bonus.

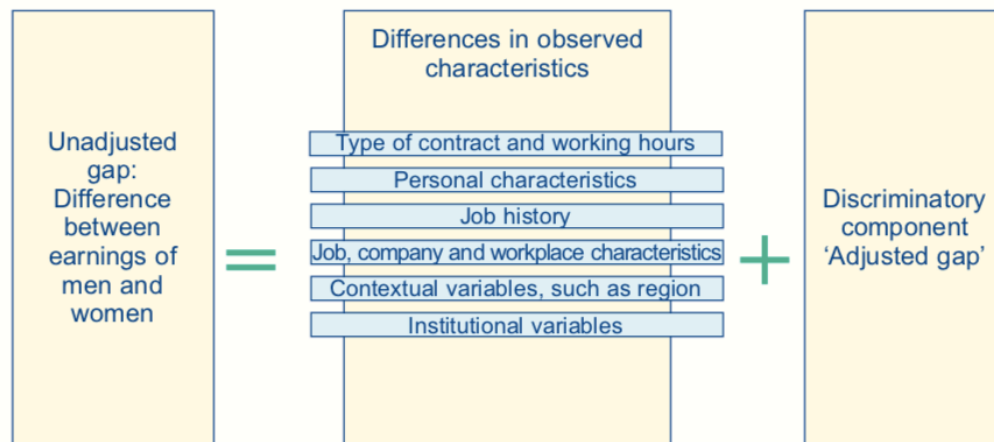
## CHAPTER 3 – THE GENDER PAY GAP: FOCUS ON THE CAUSES

After having considered the legislation adopted in order to address the gender pay gap, it is now necessary to dedicate a chapter of this dissertation to the analysis and understanding of the causes that lead to the gap itself. The literature investigating these motivations is extremely variegated and the causes itself are not always identified in an unambiguous way. This happens due to the complexity of the phenomenon that makes it practically impossible to identify a defined number of triggering drivers. Indeed, it is more appropriate to talk about a set of motivations that, altogether, contribute to the establishment of the gender pay gap. Here the aim is to provide a framework useful to understand the basic motivations causing the gender pay gap, considering two things: the first one is that an effort is made in order to offer at least an essential explanation of the motivation themselves from both a cultural and economic point of view; the second one is that the effort is done with the awareness that – due to the aforementioned complexity of the issue – any analysis carried out will be not exhaustive by its nature.

### 3.1 Essential premises: unadjusted gender pay gap vs. adjusted gender pay gap

The first essential premise that must be made is that, when talking about gender pay gap, is necessary to define the two basic concepts of *unadjusted* gender pay gap and *adjusted* one. The concept of unadjusted gender pay gap refers to the “*overall gap between men and women’s hourly pays*”. Only a part of this gap can be explained by objective observable features, including the type of job, experience or differences in

education. The adjusted pay gap is actually the part remaining after the “adjustments” of these elements and it is commonly said that it depends on the pure discrimination based on gender, even if some trends of opinions actually contemplate the idea of gender-based discrimination playing a role also in the overall unadjusted gap. In other words: even characteristics that – at first sight – seem quite “natural” and obvious following the logic of the market, could be – in reality – driven by several forms of pure discrimination based on gender. However, according to the Eurofound, the process of adjusting the gender pay gap is *“multivariate in nature, meaning that the effect of several factors can be taken into account simultaneously. Observed characteristics could be, for example, individual characteristics such as age, education, the number of children, job tenure and occupation, as well as workplace characteristics such as the economic sector and place of employment or the existence of a collective agreement. While singling out the contribution of all of these factors in explaining the gender pay gap, the remaining part is interpreted as being discriminatory in nature”*. Considering these assumptions, the Eurofound itself has identified six fundamental causes – a part from the mere discrimination – that can explain gender-based wage disparities, that is to say six categories to move from the unadjusted pay gap to the adjusted one. These six categories are related to type of contract and working hours, personal characteristics, job history, workplace characteristics, contextual and institutional variables, and are well explained in the following scheme, the one provided by the Eurofound itself.



Source: Eurofound

This classification is the result of an accurate analysis conducted collecting statistics on the gender pay gap on a regular basis from different countries. The Eurofound report contains a list of all the studies conducted basing on these data specifying that adjustments in the level of education or qualification and working time have been necessary and that *“most of the studies have taken into account basic characteristics of employees such as age, work experience and/or job tenure as well as basic characteristics of the company such as sector and size”*. Information on types of contract, working time and – in particular – industrial relations are contained only in some of the numerous studies that are listed in the report.

### 3.2 Observable explanatory factors: various forms of occupational segregation

After having made this introduction, is it possible to move on to the analysis of objectively measurable factors that are, altogether, the causes of the phenomenon being discussed in this dissertation. Women often earn less than men who do the same job. One of the main causes is the way in which women's skills are evaluated if compared to men's: jobs that require the same skills, titles or experience tend to be

poorly paid and undervalued when they are dominated by female workers. Of course, considering the European and national legislation adopted in order to align the wages between the two genders, nowadays the mere discrimination – which means that some women are paid less than men to do the same job for no apparent reason apart from their gender – can explain only a minimum, almost negligible, part of the gender pay gap. It is evident that the causes of the gender pay gap are deeper and can be found in the characteristics of the world of work, which derives from a social structure that systematically disadvantages women.

### 3.2.1 The “natural” caring role and the occupational segregation *stricto sensu*

Working women have the right to access any profession, at least in theory; in practice, however, this does not happen, and their choices are confined to a much more limited sphere. Indeed, women are not distributed uniformly in different sectors, they tend to be concentrated in a number of occupations, often linked to social stereotypes and related to the traditional roles of domestic work and care – teachers, secretaries, hairdresser, nurses and so on. These jobs are characterized by lower pay, lower qualifications needed and poor career advancements, but they are more compatible than others with the traditional management of family responsibilities. Indeed, according to the European Commission “*women devote significantly more time to household work than men. They work as cooks, child minders and cleaning ladies for their own households – much more than men. This work is essential for the quality of life of men, women and their children, but the way it is shared between women and men is a major source of gender inequality*”.

The term *occupational segregation* is actually used to identify the unequal distribution of individuals of different genders among different sectors and it is generally measured by a *segregation index* that varies from zero – in case of complete integration – to one hundred – in case of complete segregation. The value of the index



can be interpreted as the percentage of women – or men – that should be redistributed among sectors in order to achieve complete gender equality in employment distribution. The economic literature distinguishes two forms of occupational segregation: *horizontal segregation*, referring to the concentration of female employees in a limited number of sectors and professions, and *vertical segregation*, referring to female concentration at the lower levels of the hierarchy in the same occupation. The presence of horizontal segregation highlights the existence of gender-related social stereotypes that create a “rigid” labor market – i.e. not sufficiently flexible to rapidly adapt itself to exogenous changes – while the presence of vertical segregation means the existence of a “glass ceiling” that impedes women's career advancements and excludes them from top positions. This latter phenomenon will be deeply analysed later in this chapter.

Women tend to be concentrated in particular sectors and roles, hypothetically, for two main reasons: due to their own preferences and because of the preferences of other actors, such as employers, colleagues and customers. Both these two preferences can be influenced by social stereotypes. The existence of such stereotypes tends to be generally recognised, although the debate cannot be considered closed yet because of those who still consider biological differences and presumed “natural roles and characteristics” typical of the two genders as a valid justification to affirm that women are “naturally oriented” towards some sectors and roles.

The effects of domestic work and care responsibilities on the labor market participation of married women and gender pay gap are analysed by Becker in 1985: his theory assumes an optimal division of labor in which the biological difference, or the presence of a gender-based discrimination on the labor market, makes it more convenient for women to carry out their domestic activity and for men to offer themselves on the market. Therefore, each of the two partners specializes in the activity he/she performs so that the increasing returns deriving from the investment in specific human capital reinforce the differences in productivity between women and

men respectively in domestic and market activity, and – as a result – women's wages are on average lower than those of men. In Becker's model – from a pure economic point of view – what determines the sexual division of labor is the comparative advantage of women given by biological differences and discriminations. As long as women have a comparative advantage in dedicating themselves to domestic production and men in devoting themselves to production for the market, it will be efficient for women to specialize in domestic work and for men to specialize in working in the market.

Moving to another theory, the *statistical discrimination* has highlighted the economic consequences of prejudice in a context with asymmetrical and incomplete information. In modern economies, the problem of discrimination arises when *"individuals with the same economic characteristics receive different wages, and the differences are systematically correlated with certain non-economic characteristics of the individual"* such as race and gender. In a context such as the one described, in which there is uncertainty about the “quality” of the agents, there is no tool that is perfectly able to predict individual productivity. Therefore, companies will try to use any indicator that may serve the purpose, and if the race or sex are related to the characteristics relevant to the business it will be rational for the employer to use this information as well. However, this behaviour is unfair, because each person has the right to be evaluated exclusively on the basis of his/her individual characteristics and in this context a woman who has the same productivity of the man with whom she competes for the job will not be taken in consideration just because of her gender. What is worse is that this situation tends to remain unchanged over time, because the consequences of discriminatory behaviours tend to automatically confirm the beliefs that determined it. In that respect, the Arrow's model shows that even assuming that men and women are potentially perfect substitutes in production, if employers believe – for example – that women are less stable employees, they will assign them the worst jobs, in order to minimize turnover costs, and the women will reply by expressing precisely the unstable behaviour that employers would like to prevent. The

belief of employers may therefore prove to be correct in the end, but just because it is the result of their own discriminatory action. Many studies have shown that the characteristics of the job position have a strong influence on the behaviour of the workforce: employees working in low-paid jobs, with non-renewable contracts, tend to be more often absent, more inclined to resign and less attached to work. The rational choices of employers and women thus end up generating a vicious circle: employers do not invest in women because women do not invest in labor for the market, and women do not invest in labor for the market because employers do not invest in women. In such circumstances, segregation will endure until discrimination will persist.

### *The Glass Ceiling phenomenon*

For what concerns vertical segregation and the glass ceiling phenomenon, it is interesting to mention the fact that the term *glass ceiling* itself become popular in 1986, after the journalists Hymowitz and Schellhard used it in an article posted on The Wall Street Journal. Some scholars have argued that the metaphor, as it was conceived, is no longer appropriate to explain the phenomenon because women have now the possibility to achieve leadership roles, but the alternatives proposed, such as “labyrinth” – due to the series of obstacles along the way that prevent women from reaching the top of the hierarchy – actually never replaced the original terminology.

From a cultural point of view, is common to believe that success is the result of the sum of rights conditions plus the intrinsic characteristics of the person covering the leadership role, which is equal to say that the person itself has the “right stuff” to be a leader. Traditionally speaking, the typical “stuff” of the leader – such as determination and in some cases even aggression, just to cite two of them – are identified as “masculine” characteristics: the direct consequence is that traditionally “feminine” features are considered “wrong stuff” or, at least, not adequate to play a leading role. From a purely philosophical perspective – even without considering the

fact that attributing personal characteristics to a single individual only on the basis of a gender bias is questionable – the impression, here, is that society – as it often happens – tends to take a “blame-the-victim” approach, something that contribute to “*perpetuate the phenomenon of glass ceiling itself*”.

On the other hand, from an economic point of view, an interesting explanation of the phenomenon is provided by the so-called tournament theory elaborated by Lazear and Rosen. A tournament is basically a competition, that is a mechanism that put in order participants on the basis of rules aimed at optimally assigning a non-divisible prize: the rules establish the prize for the winner and the methods for evaluating and classifying the competitors. Concerning job positions, the salary received by the worker depends only on the job, and also those who commit themselves more than others in the hope of achieving a promotion are not paid more. The expected return of their commitment lies in the fact that they increase their chances of winning the prize of the tournament – i.e. to get the promotion – because is in the interest of the company to match the most capable people to the most productive and best paid positions. This pay system linked to hierarchical levels has significant consequences for women's career opportunities, since it significantly reduces their chances of being combined with hierarchically higher positions. The traditional family division of roles, in fact, implies that working women must bear a higher cost than men to participate in the tournament, due to the greater opportunity cost of their commitment (per unit of time). Their energy is in fact divided between two burdensome activities – the care work and the work for the companies – while the energy of the men is concentrated entirely in the work for the market. However, the higher cost sustained by women does not correspond to a greater benefit because the value of the compensation is established *ex ante*, independently from the performance. Consequently, the incentives to participate in the tournament are lower for women than for men, and the chances of the tournament having a male winner will be really high. It is important to underline that efficiency in tournaments is valid only if the competition is symmetrical, that is if all the agents have to bear the same opportunity

cost for the effort provided and if all the agents are treated equally. Asymmetric tournaments, on the other hand, fail in their task of optimal allocation mechanisms – which practically means they cannot match the right person to the right position. Equal opportunities policies – that is, positive actions – have been created to address this issue: their objective is also to promote tournaments with unequal rules (quotas) that can compensate – when it is the case – the disadvantaged groups.

Two interesting points of view regarding the glass ceiling are given by Glass and Cook in 2015 and Faniko *et al.* in 2017. The relevant particular characteristic of these two contributions is related to the fact that they offer a new perspective, indeed, they do not investigate the phenomenon itself and the barriers preventing women from reaching the top of the hierarchy, but concentrate their attention on the – small – portion of women that actually has been promoted.

Glass and Cook investigate the so-called “glass cliff” phenomenon according to which “*women are more likely to be promoted in firms that are struggling or in crisis*”. Presumably this happens because the competition to reach risky positions in extremely volatile companies is less strong and women are more willing to accept such precarious positions because of the fear that such an occasion may not happen again in the future. Moreover, research suggests that often the stereotypically “feminine characteristics” – that in general are not associated to the common conception of leadership – are better evaluated. Consequently, it is acceptable to say that women start working in these leadership positions with a deficit, often having the responsibility to manage critical situations. Indeed, female occupying senior positions are constantly under a much higher level of pressure – if compared to male colleagues with analogous functions – that is the result of having to manage critical situations plus the “physiological” social pressure deriving from their gender, which exposes them to a constant questioning of their authority. This continuous lack of support in the long run causes lower levels of satisfaction and higher turnover: research shows that women are more easily fired and inclined to resign. The authors suggest that the

less formalized and standardized mechanism of promotions typical of the higher levels of the pyramid can be one of the causes of the reiteration of the biases towards female employees, who continue to be “*highly visible as women*”, and not as colleagues and, eventually, leaders.

The second contribution – given by Faniko *et al.* – is particularly relevant to the extent that it investigates the role of women themselves in reinforcing stereotypes and the glass ceiling phenomenon. Indeed, it has been shown that women in senior positions tend to refuse and criticize quotas and other mechanisms aimed at “*promoting the inclusion of women in areas in which they have typically been underrepresented*”. The “*tendency of women to compete with each other*” is commonly blamed, but research shows that this characteristic – that is typical of members of minorities, and women are actually a minority in senior positions – of “*distancing themselves from the rest of the minority to overcome stereotypical expectations*” is common in both genders. This is known among psychologists with the name of Queen Bee (QB) phenomenon and may actually explain why it is not necessarily true that women occupying leadership positions should automatically promote opportunities for other junior colleagues of the same gender. Indeed, the three typical behaviours that help to detect the presence of this QB phenomenon are related to the fact that women in senior positions tend to distance themselves from young colleagues, to integrate in their manners typical – masculine – behaviours of the dominant group and legitimise the *status quo*. It is necessary to consider that often women can occupy such leadership positions only if they are able to show superior performances if compared to male colleagues and only if they invest more energies in work. The contradiction here is that, if on the one hand companies expect from women to devote their life to the job in order to obtain career advancements, on the other hand, traditional social norms condemn such attitude. The result is – again – a female worker always struggling with diverging external expectation, who actually is willing to support only women at her same level, because she has the perception that they have made the same sacrifices. Therefore, here the conclusion of the authors is

that it is not a matter of competitiveness and gender, but “only” a matter of sacrifice and positive actions – i.e. quotas – that are perceived from these women as an instrument promoting the stereotype of the woman who is not able or not sufficiently qualified to advance in her career without incentives. The paradoxical outcome of such conduct is that it reinforces stereotypes and the *status quo* which ensures women in senior positions remain a minority. Of course, here again companies could play a positive role interrupting such vicious cycle through the implementation of measures aimed at creating family-friendly working environment and, in general, at promoting the culture of work-life balance not only for women, but for all employees.

### 3.2.2 Life course and career interruptions

Gender stereotypes and the consequent association of women to traditional roles of care not only implies that they can dedicate less time to careers and the development of skills that could facilitate them in the labor market, but also means that they are subject to career interruptions to a much greater extent than their male counterparts. Several evidences show that at the beginning of their working life, wages of men and women grow in the same way as their age increases. But starting from an age of about thirty years, which is the average age in which women give birth to the first child, the trend changes: for men the growth continues almost continuously, while the female salary enters a phase of stagnation. At the typical age in which a person decides to form a family, there is not only a widening of the salary gap, but also a growth in the number of women working part-time. A reduced presence at work leads to lower hourly wages and fewer promotions. The phenomenon of career interruptions due to family needs is now widely considered as an element contributing to the creation of the gender pay gap and has been widely studied. Mincer and Polachek in 1974 showed that married women tend to interrupt their careers more times than their unmarried counterparts. Using a regression model, they concluded that the expected number of career breaks has a general impact on the investment in human capital of young women. Moreover, what is relevant is not only the interruption in itself, but

also its characteristics. In other words, career breaks produce different effects depending on their timing, type and extension. For what concerns timing, Light and Ureta in 1995 introduced the so-called “work- history model”: it measures experience in terms of portions of weeks worked in a year and helped the authors to find that 12% of gender pay gap actually depends on the difference in the timing itself. Also, the type of interruption is relevant: in 1999 a research conducted by Albrecht *et al.* identified six categories of breaks, namely unemployment, military service, household time, parental leave, other activity, and diverse – this latter group included all kinds of brief interruptions lasting less than three months. According to the type of interruption and the gender of the worker, different effects were noticed: through the creation of a wage equation controlling the type of interruption, the authors concluded that the type of interruption played a role in determining the wage disparity. In more recent times – in 2007 – Gorlich and Grip focused their attention on family related interruptions and occupational choices. They examined high-skill and low-skill male occupations, high-skill and low-skill integrated occupations, and high-skill and low-skill female occupations. Looking at these six clusters, they concluded that the depreciation rates found after family related interruptions were smaller than the ones observed after unemployment or other similar interruptions. Moreover, their research actually supported the hypothesis that women tend to choose “*jobs where human capital depreciates less from time spent out of work*”, that is low skilled jobs.

### 3.2.3 Contractual characteristics

In recent times, and in particular during the last decade, there has been a massive increase in the number of the so-called “atypical” jobs and contracts, that is basically an increase in the number of non-standard jobs such as part-time contracts and temporary jobs. For example, Italy is the European country where the percentage of employees working part-time has increased more: an increase of 9.8% between 2002 and 2015, compared to a European average increase of 4%<sup>52</sup>. What immediately leaps

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<sup>52</sup> Source: Eurostat



out is that women are the main beneficiaries of this type of contract, because of the already mentioned need to reconcile job with the traditional role of wives and mothers. For example, the lack of child-care facilities implies that women are often forced to leave work or reduce the number of working hours: in the EU countries only 65.9% of women with children work, compared to 89% of men. Although part-time work can be a personal choice, women often are insidiously forced to choose this type of contract in order to better reconcile work and family responsibilities: in Europe about 32% of women work part-time, compared to 4% of part-time men. For what concerns job satisfaction, actually there are no clear evidences of *“women being systematically happier (or less unhappy) than men on atypical jobs, which means that different gender preferences for work arrangements cannot go a long way in explaining women’s over-representation in atypical jobs”*<sup>53</sup>, even if – especially in southern Europe – non-standard contracts tend to be perceived in general as less satisfactory than full-time – standard – ones. Beyond this, it is self-evident that between part-time and full-time workers there is a huge wage disparity deriving not only from the fact that this kind of job pays lower wages, but also from the fact that it provides less benefits and possibilities of career advancements. This, actually – considering the number of women employed in part-time jobs – can explain part of the overall gender pay gap. Starting from this consideration, which is undeniable, a still open point is related to the understanding of the reasons why part-time jobs actually *“shuts down wage progression so much”*<sup>54</sup>. The number of researches investigating this specific aspect is quite limited and literature in general refers to several explanatory factors related to a concrete lack of investments – also in terms of training provisions and network opportunities – done by employers on part-time workers. In other words, there is still a system oriented to the appreciation of the number of working hours, as if “quantity” of work, automatically meant “quality” of work.

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<sup>53</sup> Source: “Gender Segregation in Employment Contracts“ by Petrongolo B. (2004)

<sup>54</sup> Source: “Part-time working plays crucial role in gender pay gap” by Tetlow G. (2018)

Considering what has been affirmed until this moment, it is clear that gender stereotypes are harmful to women because they have negative effects on their expectations and those of employers, because they distort investment in human capital and career choices, and because they produce effects that perpetuate stereotypes themselves over time. Even avoiding moral implications, occupational segregation is, above all, detrimental to the economy because it reduces the efficiency of the system and its development prospects. This statement is corroborated by at least three considerations. Firstly, it is evident that the exclusion of a large part of individuals – women – from many occupations is a waste of talent and human resources: female workforce is, practically, underutilized. Secondly, segregation is a cause of labor market rigidity, because it limits its ability to adapt to technological changes. Third and finally, vertical segregation prevents a large part of the most talented individuals<sup>55</sup> from reaching the top positions of hierarchical structures.

In 2016 Melinda Gates, talking about the scarcity of time that women face globally, promoted the “recognise, reduce and distribute” approach. According to it, the first necessary step is the recognition that there is a problem in the way in which household work is shared between the two genders which systematically disadvantage women in terms of “*developing and using their full human capital potential in the labour market*”. Consequently, responsibilities at home can and must be redistributed also through the introduction of “*public policies that can contribute to reducing the burden of unpaid work, most prominently among them childcare provision*”. Promoting gender equality now, also means promoting gender equality in the future. Indeed, researches presented at European level have showed that “*mothers’ work also has an equalising impact on the division of household chores: sons of working mothers take part in domestic work to a greater extent than sons of mothers who stayed at home*” and also their daughters have higher possibilities to of being employed with higher wages.

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<sup>55</sup> Research show that women’s academic results which demonstrates performances that are much higher than those of the males.



## CHAPTER 4 – GENDER PAY GAP AND FEMALE LEADERSHIP IN THE FINANCIAL SECTOR: WHAT WOULD IT MEAN TO HAVE MORE WOMEN IN SENIOR POSITIONS?

After having provided a general framework of the discipline regarding the gender pay gap, having examined the policy mechanisms aimed at addressing the issue and having investigated its fundamental causes, it is appropriate to dedicate the last chapter of this dissertation to the analysis of a specific sector, which is particularly representative of the treated issue: the financial sector. Indeed, the financial industry is one of the sectors blamed to have a “women problem” both in terms of gender pay gap *stricto sensu* and in terms of presence of women in senior positions. Indeed, the aim of this last chapter is – firstly – to provide a general overview of the *status quo* of the aforementioned industry and – secondly – to discuss a concrete case study of a company operating in such sector. Looking at the case study, it is necessary to take in account not only the gender pay gap, but also a phenomenon already introduced in the previous chapter, the glass ceiling one: indeed, in the end, attention is given to the understanding of how the presence of women in directory boards could affect companies’ performances.

### 4.1 The financial sector: overview

As previously disclosed, the financial industry is one of the sectors more harshly blamed to have a “women problem”. The first relevant concern in this sector has always been related to the actual number of women employed. Nonetheless, nowadays half of the bank employees are females and the issue has moved from the actual presence of female employees to the retribution offered. Indeed, for example,

statistics show that in the United States the average hourly earnings for Millennials working in the financial industry is \$29,13 for men and \$21,88 for women<sup>56</sup>. The general perception concerning this sector is that female employees tend to be paid less than their male counterparts in similar positions, even if banks often are reticent to provide those data. The majority of such data in Europe are referred to the United Kingdom, where in April 2017 came into effect a legislation amending the Equality Act of 2010 and requiring each legal entity of companies with at least two-hundred and fifty employees operating in the country to disclose data concerning gender pay gap. In general, financial institutions tend to offer several explanations to justify this gap: for example, after the publication – in 2017 – of data concerning gender pay gap by the Bank of England, the institution felt the urgency to clarify that the cause of such a result – the percentage expressing the gap was 18.6%, still a better result than the year before when the figures showed a gap of 19.1% – is essentially related to a *“big imbalance between male and female employees in the organization”*<sup>57</sup>. Indeed, the report itself specifies that *“at the moment there are fewer women in senior roles than men, as well as a higher proportion of women relative to men in lower scales”* and that *“accounting for scale differences, the gap reduces to around 3.0%”*. The situation in the Bank of England actually is emblematic of the situation in the whole industry: general sector-based statistics estimate that men are 40% more likely to be promoted than their female colleagues at the same level<sup>58</sup>. It is easy to understand that the reasons that lead to gender pay gap in the financial and banking sectors are almost the same causing the identical phenomenon of wage disparity in other sectors. The prime suspect is the well-known occupational segregation – undeniably, the number of women definitely diminish in line with seniority – together with “non-standard” forms of contractual relationships such as a massive use of part-time work. In particular, the usage of the latter tends to increase from an average age of forty, presumably because this is generally the phase – during a woman’s lifetime – in

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<sup>56</sup> Source: Paycheck © February 2018, The Financial Brand

<sup>57</sup> Source: 2017 Gender pay gap report by the Bank of England

<sup>58</sup> Data from “The Financial Brand, Closing the Gender Pay Gap in Banking”, February 2018

which she decides to put aside – or at least put less effort in – career in order to spend her energies to take care of children and family. It is true that men tend to dominate the higher levels of hierarchies and that women, nowadays, have increased their number only at lower levels, but this is not the only problem. It is not just a matter of gender pay gap, or – as far as the two issues are strictly linked – a matter of presence of women occupying senior positions: it is about the need to completely transform an industry that, historically, has always been one of the most male-dominated. The issue in the financial sector is not equal pay *stricto sensu*, but it is related to unequal opportunities. Indeed, women are 20% more likely to leave the career in finance than in any other industry<sup>59</sup> and this often happens due to cultural reasons. In finance and banking there are still strong biases concerning the evaluation of women’s skills and capabilities, which often are still seen in a stereotyped manner: this is the direct consequence of a system in which the role model is still the winning, aggressive, strong man. This implies a series of behaviours non-directly linked to the job performance, but more related to the creation of an unfavorable environment for women at work, which includes harassment, sexual comments and the so-called “motherhood penalty”, a term used by sociologists to highlight the systematic disadvantages that working mothers have to face in terms of hiring, remuneration, and daily job experience. Last but not least, looking at the financial sectors with investors’ eyes, means also notice that women represent the weakest investors. This happens precisely due to a vicious cycle according to which they are generally paid less so they have less money to invest. Considering such premises, it is clear why states – like United Kingdom has done – have started to adopt legislation aimed at addressing these issues. Indeed, transparency – together with all the possible correlated reputational risks – is one of the fundamental elements capable of raising these “women’s issues” to the top positions of the list of priority of company boards.

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<sup>59</sup> Data from “The Financial Brand, Closing the Gender Pay Gap in Banking”, February 2018

## 4.2 Case study: Barclays PLC

The second part of this last chapter is dedicated to the analysis of a case study that in recent times has occupied the pages of several newspapers. Indeed, from the last report – published in 2018 and referred to 2017 data – by Barclays Bank, it is evident that this institution has one of the largest gender pay gap of the whole sector, which is even larger if looking at the investment banking division. Here follows a brief presentation of the company and, after, the analysis of such case study.

### 4.2.1 The company

Barclays' history starts at the end of the nineteenth century, when twenty small private family banks joined together to form a new institution: Barclay and Company Limited. The majority of them was owned by families that were part of the Society of Friends – or Quakers – therefore a huge network of business relations was already existing. The main businesses in which the Bank has always operated were brewing, iron trading, shipping, shop-keeping, and – mostly – textile industries. At the beginning of the twentieth century Barclays extended its horizons by gaining control of the Colonial Bank – with branches in the Caribbean and West Africa, of the Anglo-Egyptian Bank – with branches in Palestine, Egypt, Malta and Cyprus, and of the National Bank of South Africa. The three institutions merged together in 1925. With the two World Wars, the number of women working in banks saw a significantly increase that continued until the fifties: in 1962 Barclays employed more women than men. In 1980 Regional Offices replaced the old Local Head Offices and two years later – in 1982 – Barclays Bank Limited became Barclays Bank PLC. The investment banking operation was established in 1986. As the official Barclays' website reports, *“today, Barclays PLC is one of the world's largest financial services providers, offering banking, investment banking and investment management services to customers in over fifty countries, and employing more than one-hundred and thirty thousand people worldwide”*.

## 4.2.2 The case

In February 2018 Barclays PLC – in compliance with the implemented British legislation – has published its 2017 Gender Pay Gap Report<sup>60</sup>. What emerges from this document is – as many newspapers titled – a “shocking” gender pay gap, especially in the investment bank division. Indeed, the figure that immediately catches the attention of the reader is, for sure, related to Barclays’s International, where women on average are paid almost half of their male counterparts: the mean pay gap – that actually is the difference between the average hourly pay of men and women – is of 48.0%. Less impressive, but still relevant, results are related to Barclays UK, where the mean pay gap is 26.0%, and to Group Service Company, with a 25.8% mean pay gap. Another interesting view offered by the company is related to the payment of bonuses, indeed, in its report, Barclays also provides a scheme showing the bonus pay gap. At Barclays UK, women’s bonus pays – on the median measure, that is the difference between the midpoints in the ranges of bonuses paid to men and women – was 46.9% than that for men. Moreover, at Barclays International, for every £100 000 of bonuses given to men, women are only receiving £27 000, with a mean bonus gap – defined as the difference between the average bonus paid to men and women – of 78.7%. In the Group Service Company, the mean bonus gap is 48.8%. These figures are even more relevant if related to the proportion of employees who received bonus pay during the year: actually, the percentage of men and women receiving such bonus payments are quite similar, in a range going from 91.2% – male employees receiving bonuses in Group Service Company – to 95.2% – female employees receiving bonuses in Barclays UK.

What is interesting about the report published by Barclays PLC is that it contains a section aimed at explaining the reasons behind such data. Indeed, it explains that

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<sup>60</sup> To have a complete overview of the figures explained in this paragraph, as they are shown in the 2017 Gender pay gap report by Barclays PLC, please refer to Appendix 1.



wage disparities at Barclays are “*driven by two main factors*”, i.e. the higher proportion of men in more senior – that is, higher paid – roles and the higher proportion of women in more junior – that is, lower paid – roles. In particular, in Barclays International the proportion of senior staff is higher than typically observed in other businesses and functions. Considering data provided by the company, it is easy to notice that the total population has been divided in to four quartiles according to the ordinary pay – fixed pay. Looking at gender proportions in ordinary pay quartiles, it is evident that in Barclays International only 19% of the total amount of people included in the upper quartile is composed by women, while they are the majority – 63% – in the lower quartile.

Considering how the way in which employees are distributed within the organization affect the wage gap figures, Barclays PLC has started a policy aimed at addressing the issue of gender pay gap also setting targets regarding female presence in senior positions. At Barclays, they aim to reach 33% of female representation on the Board of Directors and among the Group Executive Committee – including their direct reports – by 2020: the current figures are 21% and 25% respectively. The strategy is summarized in four principles: create new career opportunities to increase diversity, build a pipeline of female leaders through talent management and leadership development, invest in cultural change and support wider societal issues through external strategic partnerships. In concrete this means the creation of programs for apprenticeship and graduate, a regularly review of succession plans and investments on maternity, paternity, adoption and shared parental leave policies, even going beyond the statutory requirements. Paradoxically, in the same 2017, all these efforts have been recognized and Barclays PLC has been named one of The Times Top 50 Employers for Women in 2017 for the seventh consecutive year.

## 4.3 The issue of “female leadership”

The Barclays case is emblematic in order to understand how the gender pay gap, in reality, cannot be studied on its own, but must be taken in consideration together with a series of other phenomenon, such as the glass ceiling one. Beyond the systematic analysis of the characteristics, causes and consequences of this issue on women, researches have given a large contribution also in investigating the consequences that an increase in the number of women in senior positions could have on companies themselves.

### 4.3.1 Is it possible to talk about a “female” leadership style?

As already explained in the previous chapter, the conventional concept of leadership has been built on traditionally “masculine” characteristics – for example strength. Nonetheless, in recent times the – even if small – increase in the number of women covering leadership roles, has actually modified the common perception of which are the essential requirements to be a good leader. More traditionally “feminine” characteristics – such as mentoring or cooperation, just to cite two of the many – have been reconsidered, also in light of the changes occurring in contemporary organizations in terms of increasing workforce diversity, technological growth and weakening of geopolitical borders – that is globalization. In such scenario, aptitudes such as the capability to encourage teamwork – and workers in general – or the ability to establish collaborative relationships are considered essential.

Before 1990 researches on leadership styles made a clear distinction between the so-called “*task-oriented*” style of leadership and the “*interpersonally oriented*” one. Another distinction was made between leaders who behave “*democratically*” – that is allow dependents to participate in the decision-making process – and those who behave “*autocratically*” – that is dissuade them from participating in such decision-making process. Women often demonstrated to be more “*interpersonally-oriented*”

ad always demonstrated to be more “*democratic*” if compared to men that preferred a more “*autocratic*” and “*task-oriented*” style. Indeed, the fact of being more “*democratically-oriented*” has proved to be effective for women in case of situations in which subordinates could have questioned their authority.

After 1990, studies gave a new definition to leadership styles. According to such studies the “*transformational leadership*” occurs when there is the establishment of a relationship of confidence and trust, usually through processes of mentoring and encouraging subordinates to express their ideas and point of views. These leaders are in contrast with “*transactional leaders*”, who tend to establish exchange relationships with subordinates: they tend to define objectives and personal responsibilities in a clearer manner and are more willing to correct subordinates themselves in case of failure in meeting the prescribed goals. These two styles – together with the “*laissez-faire*” one, which occurs when there is actually a failure in taking the managing responsibility – are assessed through the Multifactor Leadership Questionnaire (MLQ). In general female leaders tend to be more “*transformational*”, but – at the same time – they reward subordinated more often than males do. This probably happens due to stereotyped gender roles, which actually “push” women towards the “less masculine” characteristic of the *transactional leader*. In literature there is almost no evidence of a net advantage in case of women covering leading roles, even if the cultural and social changes aforementioned force companies to face new organisational challenges and – as previously said – some scholars have argued that this new “feminine” way of being a leader could be more effective in managing such trials. According to Eagly and Carli<sup>61</sup>, it is reasonable to affirm that the success of a leader actually depends on the context: indeed, evidences coming from meta-analysis have shown that in extremely “masculine” contexts women are actually less efficient than men, but often this is the result of the so-called prejudicial

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<sup>61</sup> Eagly A. H. and Carli L. L. (2003) *The female leadership advantage: an evaluation of the evidence*

disadvantage, that is an external factor. In other words, in context dominated by males, female leaders suffer from a strong prejudice and have more chances to see their authority questioned. Ironically, the fact that women have to overcome such difficulties – not only related to the aforementioned glass ceiling, but also related to the need to actually work harder in order to be recognized as leaders – often means that women in senior positions are generally more competent and prepared in meetings than their male counterparts, that is to say they invest more in human capital. Other branches of research – such as the one conducted in 2001 by van Engen *et al.* – actually state that women and men do not necessarily have different leadership styles, but – simply – there are some roles requiring people covering them to behave in a certain manner, regardless of gender. Looking at the status of research, the only certain assumption seems to be the fact that the number of women in leading positions is – slowly but inexorably – increasing and that women themselves have changed their career expectations in an environment in which “*appointments of female leaders have come to symbolize progressive organizational change*”<sup>62</sup>.

#### 4.3.2 Does the presence of women in senior positions affect company performances?

Considering the possible effects of such presumed female style of leadership, an interesting contribute is given by Post and Byron<sup>63</sup>. They defined the female board representation as the “*number, proportion, or presence of women on boards of directors*” and focused their attention on *accounting returns* – that is the profitability of the firm, how well it uses its assets – and on *market performance* – referring to “*the behaviour of a security or asset in the marketplace, reflecting external perceptions and expectations of a firm’s future or long-term value*”. They considered two sets of activities, namely *board monitoring* and *board strategy involvement*,

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<sup>62</sup> Eagly A. H. and Carli L. L. (2003) *The female leadership advantage: an evaluation of the evidence*

<sup>63</sup> Post C., Byron K. (2014) *Women on boards and firm financial performance: a meta-analysis*

referred – respectively – to “*the extent to which boards engage in activities that provide oversight of the firm and seek to control managerial opportunism*” and to “*the extent to which boards engage in activities related to their strategic advising role and engage in decision-making about how the firm should compete in the marketplace*” and actually demonstrate how “*firms with more female directors tend to have higher accounting returns but not necessarily stronger market performance*”. As explained also in the report published by MSCI<sup>64</sup> in 2015 companies that had strong female leadership the generated per year was ROE of 10.1%, higher if compared to the 7.4% of the ones without. Furthermore, “*companies lacking board diversity tend to suffer more governance-related controversies than average*”. A probable explanation for those results is related to the fact that, in general, more diverse groups tend to make better decisions and to commonly be more innovative if compared to more homogeneous one. This is something that could be related to the presence of several different points of view or – as some scholars have argued – to the fact that women maybe be more risk averse while making decisions. Actually, the relationship between gender differences in company boards and company results seems not direct but may be influenced by the context and the majority of – if not all – the questions on if, how and why female presence can produce such effects are still open. However, regardless of the figures, generally speaking the value of different points of view is unquestionable, indeed in recent times companies seem to make efforts in order to leverage the productive potential of the “female part” of their human resources.

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<sup>64</sup> MSCI ESG Research Inc. is an American provider of equity, fixed income, hedge fund stock market indexes, and equity portfolio analysis tools.

## CONCLUDING REMARKS

The objective of this dissertation, as expressed at its beginning, concerned the analysis of gender pay gap in a “all-inclusive perspective”, which takes in consideration wage disparities as part of a broader framework, as expression of a bigger problem linked to the traditional systematic devaluation of female work and to the recognition of women’s value only due to their roles of wives and mothers. What is clear at the end of this study is that – despite the numerous and undeniable steps made – the path towards the affirmation of women in the labour market is still long and bumpy. In light of the research done in the second chapter – the one concerning policy mechanisms – it is undeniable that institutions at every levels have shown several forms of commitment, adopting norms aimed not only at addressing the issue of wage disparity, but also at officially recognizing the principle of equal treatment among human beings, regardless of their gender. Nonetheless – as already affirmed during the study – what emerges is the existence of a basic cultural problem, which actually still legitimises an ancient system in which women are constantly exposed to various forms of – often conflicting – pressures. If, on the one hand, women are allowed – and nowadays even expected – to produce a tangible, economic, value, on the other hand there is still the existence of several well-established stereotypes that actually impede the full professional development of the female worker, her “investment in human capital”. The result of such a paradox is a crowd of determined, but exhausted women always trying to meet contradictory expectations and commonly put in front of a choice between working and family life. Indeed, the constant imbalance between these two spheres of life is the cause of recurrent career interruptions and a global dissatisfaction. The issue of equal retribution between men and women is just a relatively easy measurable aspect of a more complex phenomenon which deserves – among the others – focused interventions in terms of combating discriminatory policies and gender stereotypes concerning women's work, as well as effective policies on maternity and paternity leave that promote greater

sharing of family responsibilities between man and woman. In this sense is it possible to affirm that the challenge has been taken by big companies, where they establish policies aimed at promoting the culture of work-life balance. In this perspective, the desire is still oriented towards a cultural change in the society as a whole. Indeed, cultural change is the only needed element in order to create a rewarding system which remunerates not only effective time spent at work, that is *quantity* of work, but also its *quality* in a perspective of combating gender stereotypes and traditional roles to create opportunities not for women or men, but for *people*.

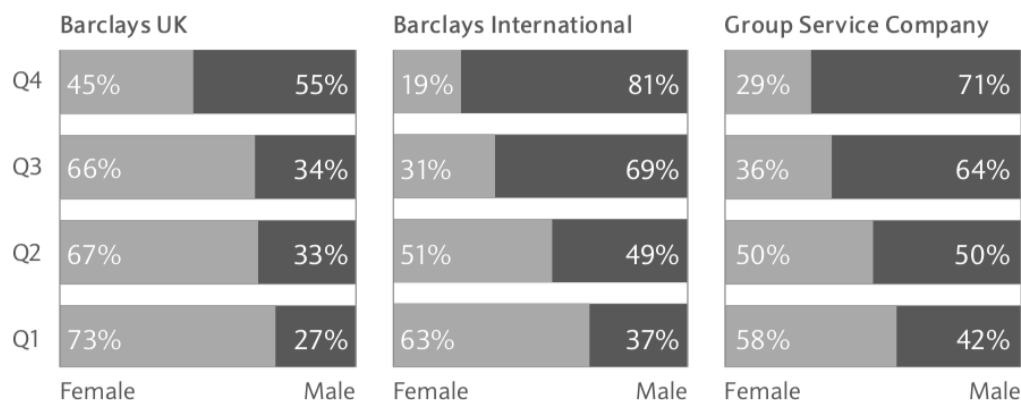
# APPENDIX 1

Here follows a list of the figures regarding gender pay gap at Barclays PLC, as they are shown in the 2017 Gender pay gap report.

	Barclays UK		Barclays International		Group Service Company	
	Median	Mean	Median	Mean	Median	Mean
<b>Ordinary pay gap</b> (fixed pay as at 5 April 2017)	14.2%	26.0%	43.5%	48.0%	29.9%	25.8%
The <b>mean pay gap</b> shown is the difference between the average hourly pay of men and women. The <b>median pay gap</b> is the difference between the midpoints in the ranges of hourly pay of men and women.						

	Barclays UK		Barclays International		Group Service Company	
	Median	Mean	Median	Mean	Median	Mean
<b>Bonus pay gap</b> (for year to 5 April 2017)	46.9%	60.1%	73.3%	78.7%	24.0%	48.8%
The <b>mean bonus gap</b> shown is the difference between the average bonus paid to men and women. The <b>median bonus gap</b> is the difference between the midpoints in the ranges of bonuses paid to men and women.						
<b>Proportion of colleagues who received bonus pay during the year to 5 April 2017</b>	Female	Male	Female	Male	Female	Male
	95.2%	93.1%	93.4%	93.7%	92.5%	91.2%

## Gender Proportions in Ordinary Pay Quartiles (Fixed Pay)







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