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Designing for Inclusion? Technologically Enhanced Bodies and Lines of (In)equality in Labour Law

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1. *Introduction: Shifting the Point of Reference*

Advancements in the implementation of new technologies directly targeting workers' bodies shift the debate on workplace equality beyond classic categories such as gender, age, or disability. The ILO and EU institutions indicate that these technologies can both reduce physical barriers and generate new forms of inequality, such as between "enhanced" and "natural" workers[1]. This raises the question of the need to reinterpret legal categories, such as indirect discrimination or the protection of biometric data[2].

[1] EP, *Human enhancement and AI: Implications for the future of work and equality. Study for the Committee on Employment and Social Affairs,* Policy Department for Economic, Scientific and Quality of Life Policies, 2022; ILO, *AI and digitalisation are transforming safety and health at work*, International Labour Office, 2025.

[2] In labour law scholarship see in particular Maio, *Diritto del lavoro e potenziamento umano. I dilemmi del lavoratore aumentato*, in *DLRI*, 2020, 3, p. 513 ff.; Delfino, *Lavoro e realtà*

Analyzing technological enhancement of the body at work requires starting with a question not about the devices themselves but about what "ability to work" begins to mean in their presence. Increasingly, we encounter situations where a worker's body functions not only as a biological organism but also as a system interacting with assistive tools such as exoskeletons, biomechanical sensors, control interfaces, or workload monitoring systems. In this paper I collectively refer to these as the "technologically assisted body". Introducing this category does not imply a dystopian vision of the future but allows us to capture a subtle conceptual shift: the boundary between the "natural" capacity of an organism and the capacity co-created by technology becomes blurred. Consequently, this destabilizes the previous understanding of "normal ability" as something obvious, common, and measurable according to a single, biological point of reference.

This shift is not yet happening in the form of mass practices. The degree of popularization of assistive technologies is still limited, fragmented, and sectorally diverse. That is why I propose a theoretical rather than empirical analysis in this paper. Many solutions remain in the testing, pilot, or niche application phase, making it difficult to formulate conclusions based on stable practice patterns. At the same time, what is rare today already influences the language in which we describe work, efficiency, and employer responsibility. Risks related to equality, autonomy, or technological pressure first appear in the realm of norms and expectations, and only later materialize in specific procedures, regulations, or workplace conflicts. Theoretical analysis thus allows us to capture this "earlier" moment when the point of reference changes before unambiguous empirical data emerge.

In the further part of the paper, I use two interpretative frameworks that help describe this shift. The first is inspired by Donna Haraway's thinking, known for her reflections on the relationship between humans, bodies, and technology. In her view, the body is not opposed to technology but forms a biological-technical hybrid, always embedded in a network of tools, environments, and practices. Referring to this way of thinking allows us to

aumentata: i limiti del potenziamento umano, in Biasi (ed.), *Diritto del lavoro e intelligenza artificiale*, Giuffrè, 2024, p. 597 ff.; the contributions collected in Delfino, De vivo, Zaccaria (eds.), *Innovazione tecnologica e sostenibilità. Verso un approccio integrato delle scienze sociali e giuridiche*, Quaderno della Rivista Diritti Lavori Mercati, n. 19, Editoriale Scientifica, 2026; and earlier Adamczyk, Surdykowska, *Cyborgs in the Workplace? Some Preliminary Considerations*, in *EJICLS*, 2022, 10(3)/11(1), pp. 158-173.

treat augmentation not as a sudden breakthrough but as a revelation of a process that has been ongoing in the world of work for a long time – the co-construction of efficiency through technology. The second framework is provided by the perspective related to research on physical and cognitive integrity, developed by Nita Farahany, among others, who deals with the ethical and legal consequences of neurotechnology and interference in the cognitive sphere. In this approach, the key question becomes the cost of refusing to use assistive technology: whether the worker's decision is truly voluntary when the reference point for "normal" efficiency shifts towards assisted bodies. This perspective allows us to capture the tension between protecting subjectivity and the growing role of technological efficiency standards. Both frameworks serve an orienting function in the paper, they do not replace legal analysis but help us see that augmentation changes not only the tools of work but also the conditions in which we define equality, ability, and autonomy. It is precisely in this shifted point of reference that questions arise that labour law will have to address in the coming years. At the same time, the theoretical analysis is not detached from positive law. Where relevant, I refer to the existing EU framework, in particular the OSH Framework Directive 89/391/EEC, the Employment Equality Directive 2000/78/EC and the General Data Protection Regulation, in order to show both which safeguards are already available and where the protection offered by current law ends.

This paper will not refer in any way to terms often invoked in discussions about human augmentation, such as transhumanism and posthumanism. These are ideological and philosophical movements that speculate about futuristic visions and hypothetical human possibilities, often considering technologies that do not currently exist[3]. While transhumanism considers (the consequences of) redesigning the human body in various ways to exceed its functional capabilities, posthumanism predicts such significant changes in humans that they cease to represent the human species. Unlike the pragmatic nature of the augmentation phenomenon in the workplace, transhumanism and posthumanism are speculative approaches and belong to the realm of philosophy. However, the concept of "cyborgization" will appear because, in the author's opinion, it accurately reflects the potential

[3] Vita-More, *Designing human 2.0 (transhuman) - regenerative existence*, in *Artifact*, 2008, 2 (3-4), pp. 145-152, https://doi.org/10.1080/17493460802028 5.

and likely direction of changes in the human/technology relationship in the context of the workplace. In relation to external relations in the human/economy sphere, influencing the development of augmentation, the plane for further considerations will be turbocapitalism understood as unchecked market activity that drives innovation in the workplace environment[4]. In this paper, turbocapitalism is treated not as a separate theoretical framework, but as the economic context in which technological possibilities may be translated into progressively higher expectations of worker performance.

2. *What Is Augmentation in the Workplace? Conceptual Frameworks and Ontology of the Worker's Body*

Augmentation in the workplace does not simply mean a "new generation of personal protective equipment" but a change in the way we think about the worker's body itself. The body ceases to be the sole carrier of biological efficiency and becomes a nodal point in the system: human-device-work organization. A good example is exoskeletons, defined by EU-OSHA as devices worn on the body that mechanically support the musculoskeletal system and can reduce loads on the back or shoulders, but at the same time generate new risks for workers' safety and health[5]. For this reason, a conceptual framework is needed that allows us to think of technology not as an addition to the "natural" body, but as a factor co-defining the ability to work, and consequently the scope of labour law protection.

For the purposes of further analysis, I propose distinguishing three groups of technologies related to work augmentation. It is not about a catalog of gadgets but about indicating types of devices that realistically change the way the work organization "sees" and evaluates the body.

Wearable Technologies

This category primarily includes exoskeletons and other biomechanical support systems, such as lumbar support vests or "backpacks" that trans-

[4] Luttwak, *Capitalism: Winers and Losers in the Global Economy*, HarperCollins, 1999.

[5] Peters, Wischniewski, *The impact of using exoskeletons on occupational safety and health*, Discussion paper, European Agency for Safety and Health at Work (EU-OSHA), 2019.

fer some of the load to the hips or legs. EU-OSHA describes exoskeletons as external mechanical structures (active or passive) that modify the forces acting on the body, reducing local loads but potentially transferring them to other places[6]. Ergonomic literature emphasizes that they can significantly reduce muscle activity and the risk of injury, but at the same time create new load patterns and thus new secondary risks, such as pain in other joints, abrasions, overheating, or limited range of motion[7]. It is also important that exoskeletons are not ordinary tools or classic personal protective equipment. In many cases, they must be closely fitted to the body, exert pressure on the skin, and transfer forces through specific body segments. This means that some workers are unable to use them (e.g. due to size, build, or existing conditions), while others may experience discomfort or secondary injuries. From the perspective of labour law, this means that the exoskeleton co-defines the physical capacity of the worker and simultaneously becomes a potential source of new disputes over health and safety, responsibility, and equal treatment.

Implantable and Subcutaneous Technologies (Insideables/Implants)

The second type involves solutions that "enter" under the worker's skin: identification chips allowing doors to be opened or systems to be logged into, medical sensors monitoring pulse or other physiological parameters, and subcutaneous interfaces coupled with work tools. Unlike classic personal protective equipment, the boundary between the body and the device becomes difficult to determine here. An implant can simultaneously be a "tool" of the employer and an element of the worker's bodily integrity. Questions arise: Can the lack of consent for an implant be a basis for refusing employment or changing positions? Who is the controller of the data acquired by the implant? Can implantable devices be considered "necessary" for performing work under health and safety regulations, and if so, when? In this case, augmentation does not so much "increase" muscle strength as it turns bodily functions into a source of data that can be used to assess performance, availability, or "health risk" of the worker.

[6] Peters, Wischniewski, *cit*.

[7] Pote, Asbeck, Asbeck, *The ethics of mandatory exoskeleton use in commercial and industrial settings*, in *IEEE-TTS*, 2023, 4(4), pp. 302-313, https://doi.org/10.1109/TTS.2023.3264807.

Brain-Computer Interfaces and Biometric Systems

The third group includes technologies that enter the realm of neuro-cognitive reactions. On one hand, these are BCI (brain-computer interface) systems, often based on EEG signal measurement, and on the other, advanced biometric systems that collect real-time information on pulse, stress levels, and movement patterns. They can be used to monitor worker fatigue and "alertness", predict accident risks, or control machines or robots using brain signals. When algorithms begin to translate physiological states into "fitness for work" indicators, technology ceases to be a neutral tool and becomes a norm-creating mechanism. The device and its associated analytical system co-determine what it means to be "sufficiently rested", "sufficiently concentrated" or "suitable for continued work".

All three categories share the fact that they "enter" very close to the worker's body, to the extent that it is difficult to maintain classic distinctions: "work tool – body – personal protective equipment – workplace infrastructure". For example, EU-OSHA notes that exoskeletons can be classified as machines, personal protective equipment, or medical devices, and their legal status depends on their function and context of use[8].

It is significant that in the case of technologies used for worker augmentation, the proximity to the body and the need to adapt to the dimensions of a given person give rise to additional problems: privacy issues (disclosure of body dimensions), exclusion of people who "do not fit" in available sizes, and potential biases in personnel decisions[9].

From the perspective of this paper, it is crucial that these technologies:

- organize work: they enable a new division of tasks, a different tempo, a different workstation construction;
- enter performance evaluation systems: they generate data on which the assessment of a "good worker" is based;
- modify the threshold of "normal" performance: they make what was previously maximum effort recognizable as a new standard, and, as Pote et al. show, in practice this is often accompanied by the tempta-

[8] Peters, Wischniewski, *cit*. The relevant EU instruments are, respectively, Regulation (EU) 2023/1230 on machinery, Regulation (EU) 2016/425 on personal protective equipment and Regulation (EU) 2017/745 on medical devices.

[9] Pote, Asbeck, Asbeck, *cit*.

tion to increase requirements for "enhanced" individuals (overuse, overwork)[10].

This is where the law comes in. First, the relationship with health and safety: is augmentation a protective measure or also a source of new risks? Second, the relationship with equal treatment: the question is whether unsupported workers, or those who do not "fit" into an exoskeleton, will be indirectly discriminated against by norms calibrated to "enhanced" bodies. Finally, the relationship with data protection (especially biometric and body data).

The existing EU framework on occupational safety and health already offers some points of orientation here. The Framework Directive 89/391/EEC obliges the employer to adapt the work to the individual, "especially as regards the design of work places, the choice of work equipment and the choice of working and production methods", with a view in particular to alleviating work at a predetermined work-rate (Article 6(2)(d)). It also requires adapting to technical progress (Article 6(2)(e)), developing a coherent prevention policy covering technology, organisation of work and social relationships, which is the usual legal basis for addressing psychosocial risks (Article 6(2)(g)), and giving collective protective measures priority over individual ones (Article 6(2)(h))[11]. Read against the background of augmentation, these principles point in a clear direction: technology should serve to adapt work to the worker, not the worker to a performance norm set by the device. An exoskeleton issued to compensate for a workstation that remains ergonomically poor reverses this hierarchy. The Directive also requires that the planning and introduction of new technologies be the subject of consultation with workers and their representatives as regards their consequences for safety and health (Article 6(3)(c) and Article 11). The same logic is reflected in the new Machinery Regulation, whose ergonomic requirements include avoiding a working rhythm determined by the machine[12]. The problem is that these rules were written for equipment

[10] *Ibidem*.

[11] Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work, OJ L 183, 29.6.1989, pp. 1-8, Articles 6, 11 and 13.

[12] Regulation (EU) 2023/1230 of the European Parliament and of the Council of 14 June 2023 on machinery, applicable from 20 January 2027, Annex III, point 1.1.6. See also D'Arcangelo, *Potenziamento e sicurezza del lavoratore*, in Delfino, De Vivo, Zaccaria (eds.),

that stands next to the worker, not for devices worn on or implanted in the body. If an exoskeleton is introduced as a protective measure, the worker is in principle obliged to use it correctly (Article 13). This raises the question of whether a refusal can still be legitimate while the evidence on the long-term effects of such devices remains incomplete[13].

The following sections will develop this intuition, showing how the change in the ontology of the worker's body translates into a moving benchmark of work ability and the need to revise classic labour law categories.

3. *Donna Haraway: Augmentation as a Change in the Point of Reference*

"The Cyborg Manifesto"[14] was primarily a feminist-rooted manifestation of the ontology of hybridization of nature and culture, but it also became an opening for discussion on the relationship between humans and the technology they create. Donna Haraway points out that the boundary between humans and technology has never been stable: the subject always functions in relation to the world of tools, machines, communication systems, and power. Her figure of the "cyborg" is not a science fiction description but an analytical metaphor that helps us see that in the world of work, the body is not pure biology but is always already connected with technology, whether in the form of hand tools, industrial machines, or contemporary digital interfaces. In this sense, augmentation does not introduce a completely new logic but radicalizes a process that has been ongoing for a long time: technology increasingly enters the body, and the body increasingly becomes an element of work infrastructure[15].

cit., p. 105 ff., who stresses that the health and safety risks of wearable devices, including psychosocial ones, cannot be separated from the protection of the personal data these devices collect.

[13] Maffei, *Robot, potenziamento umano e diritto al dissenso del lavoratore*, in Delfino, De Vivo, Zaccaria (eds.), *cit.*, p. 135 ff., esp. pp. 147-150. Referring to the Italian technical report UNI/TR 11950:2024 on occupational exoskeletons, the author argues that as long as the scientific evidence on such devices remains immature, the worker retains some margin to refuse them, and that their introduction as a safety measure should preferably be agreed with the social partners.

[14] Haraway, *A Manifesto for Cyborgs: Science, Technology and Socialist Feminism in the 1980s*, in *SR*, 1985, no. 80, pp. 65-108.

[15] Haraway, *Simians, Cyborgs and Women: The Reinvention of Nature*, Routledge, 1991.

In this context, the worker's body can be described as a technobiological hybrid. This means that its efficiency and performance do not result solely from physiological characteristics but are co-created by assistive devices (exoskeletons, biometric sensors, fatigue prediction systems) and algorithms for assessing risk and efficiency. With the advent of augmentation, the boundary between the work tool (what "belongs" to the body "from the outside"), the worker's body (what was considered biologically given), and the production infrastructure (what organizes the work process) begins to shift.

An exoskeleton, implant, or biometric system cannot be easily assigned to one of these categories: they are simultaneously a tool, an element of the work environment, and a part of the worker's bodily experience. Consequently, what was considered obvious in labour law also changes. Previously, it was implicitly assumed that the starting point was the "natural" body: work capacity was understood as a biological property of the individual, and technology had an auxiliary or protective character (e.g. PPE). When devices begin to co-create the effect of work and shape its pace and scope, this presumption ceases to be stable.

From a legal perspective, this leads to a significant shift in analytical categories. If some tasks can only be performed with technological support, then the concept of "ability to work" ceases to be exclusively biological and becomes dependent on the technical configuration of the workstation. The same applies to the way we understand:

- performance (whether it is a measure of biological efficiency or "assisted" efficiency);
- safety and health protection (whether augmentation is a protective measure or a source of new risks);
- absenteeism and efficiency (whether "inefficiency" results from the body or from lack of access to technology).

In this sense, augmentation is not just a technology but a change in the point of reference against which the abilities of workers are assessed. What was previously seen as the limit of human bodily effort can become a new standard, but it is a standard co-created by assistive devices. Thus, the normality of abilities becomes fluid.

If the benchmark is co-created by technology, then it is no longer biologically neutral. The question arises whether labour law can continue to operate with categories derived from the "natural body" model, when

in practice the ability to work arises at the intersection of biology, infrastructure, and algorithmically processed body data. Answering this question will be crucial for further considerations on equal treatment, the moving threshold of performance, and potential pressure to "assimilate to the enhanced pattern".

The previous assumption of labour law doctrine was relatively stable: the worker was understood as a bodily subject with "natural" limits of efficiency, and the ability to work was a biological point of reference for assessing performance, safety, or the ability to perform work. Augmentation clearly undermines this foundation because part of the efficiency begins to result from the operation of assistive devices, so the result of work becomes co-produced by the body and technology.

Consequently, the point of reference ceases to be common. Instead of one category of "ability to work", at least two standards emerge: unenhanced ability and technologically enhanced ability[16]. This dichotomy does not require formal coercion; it arises through the calibration of organizational norms: work pace, absence thresholds, definitions of "normal performance". In the literature on in-body wearable devices, it is noted that their introduction into the workplace is not normatively neutral: systems monitoring physiological parameters or safety begin to co-determine what is considered an acceptable level of load, risk, and worker efficiency. At the same time, as shown by the analysis of the regulatory frameworks of the MDR (Medical Device Regulation) and the GDPR (General Data Protection Regulation), there is a lack of regulations specifically addressing the use of these technologies in employment, even though they interfere with bodily integrity and the processing of sensitive health data[17].

From the perspective of labour law, this leads to a series of doctrinal questions. First, it concerns equal treatment. Does an unenhanced worker become "unfit" in conditions of a moving ability benchmark, even though their biological efficiency falls within previous normative limits? Second,

[16] Ziviello, *Potenziamento umano e soft robotica: possibili implicazioni di diritto previdenziale,* in Delfino, De Vivo, Zaccaria (eds.), *cit.*, p. 293 ff., describes this as a crisis of the traditional dichotomy between "able" and "unable" to work and warns against the emergence of a new category of "hyper-abled" workers, to the detriment of those who cannot afford or refuse technological assistance.

[17] Marassi, Földes, *From healthcare to employment: Tackling the regulatory challenges of in-body wearable devices at work*, in *ELLJ*, 2025, 16(1), pp. 45-64.

indirect discrimination: seemingly neutral requirements (e.g. constant work pace, standard response to thermal load) may favor people using assistive technologies. Third, the question of the employer's responsibility for shaping work norms arises. The decision to implement technology is not just a technical decision but also a norm-creating one, as it redefines average performance and safety. Finally, autonomy and the cost of refusal: even without a formal obligation to augment, the worker incurs a real cost of remaining "unenhanced" (risk of marginalization, lower performance evaluation, limited access to some tasks), which the literature on in-body wearables links to increasing organizational pressure in the name of health and safety protection and efficiency[18].

At this point, a forward-looking question emerges. Should labour law protect the pluralism of embodiments and recognize the equal rights of "unenhanced ability", or should it de facto sanction the performance norm co-created by technology? The answer to this question will determine whether augmentation is treated as an exceptional and optional tool or as a new, tacitly accepted standard of ability to work.

4. *Equality in Conditions of a Moving Ability Benchmark*

In the context of technological body enhancement, the key question is how "normal performance" at work is defined. Traditionally, although rarely explicitly articulated, the point of reference remained the biological body with its natural limitations and variability. Even where productivity indicators, work rhythm, or evaluation criteria were used, a common bodily basis was assumed in the background to which one could refer. With the advent of assistive technologies, the situation begins to change. Performance increasingly becomes the result of the interaction between the organism and the device, so it is no longer the effect of uniform, comparable "natural efficiency". The point of reference ceases to be exclusively biological as it shifts towards "enhanced" ability, available only to some workers.

In such a situation, there is a need to think about equality not in terms of one universal standard but in terms of a pluralism of abilities. This means recognizing that different ways of performing tasks can coexist in the work-

[18] *Ibidem*.

place: through an unassisted body, a body using protective technologies, or a body functioning based on more advanced forms of augmentation. Equality then does not consist in equalizing results but in shaping employment norms so that they do not favour one type of embodiment as the default point of reference. This shift in perspective allows us to better grasp why in the world of assistive technologies, the traditional understanding of "objective" performance criteria loses its apparent neutrality.

The risk arises when this pluralism is replaced by assimilation to the standard of the "enhanced" body. Importantly, this does not require a formal mandate to use technology or explicit coercion by the employer. In many scenarios, it is sufficient to calibrate work norms: the pace of task completion, sick leave thresholds, expected availability, or scope of duties. If these indicators are based on the capabilities of workers using assistive solutions, then those who do not use such technologies (for health, ethical, or financial reasons, or simply by choice) begin to function below the assumed standard. There is no overt discrimination. The change occurs at the level of the definition of "normality".

Interestingly, a similar intuition can be found in labour law doctrine on the worker's duty of diligence. In the Italian debate, it has been argued that the performance an employer may legally require is defined by an abstract model, i.e. by what can normally be expected from an average worker performing the same tasks, and not by what an individual worker achieves with the help of technology. Consequently, even where a worker agrees to use an exoskeleton to increase output, the "enhanced" performance does not become the legally required standard[19]. At the same time, the same author notes that what counts as "normal" is historically determined and may change with technical progress. This is exactly where the risk identified in this paper lies: the protection works as long as augmentation remains an individual choice, but it weakens once enhanced performance becomes widespread enough to reshape the abstract model itself.

Describing such dynamics leads us to the category of indirect discrimination. The mechanism of exclusion lies not in explicitly formulated dif-

[19] Monda, *Potenziamento del lavoratore, rendimento e obbligo di diligenza*, in Delfino, De Vivo, Zaccaria (eds.), *cit.*, p. 157 ff., esp. pp. 160-166. The analysis refers to the Italian rule on the worker's duty of diligence (Article 2104 of the Civil Code) and to the case law on dismissal for poor performance, which measures performance against that of the average diligent worker in the same job.

ferentiating criteria but in seemingly neutral organizational requirements: schedule, minimum performance, efficiency assessment algorithms. In practice, they can act as structural technological pressure, the costs of which are borne mainly by unassisted workers. They become the reference group for evaluating the effects of norms, not because they are "weaker" but because they do not participate in the technologically elevated benchmark. With this approach, the question of equality does not concern technology itself as much as the basis on which the comparative standard, according to which work results are measured, is established.

From a legal point of view, however, indirect discrimination is not a free-standing concept. Under Directive 2000/78/EC, it occurs where an apparently neutral provision, criterion or practice puts persons having a particular religion or belief, a disability, a particular age or a particular sexual orientation at a particular disadvantage compared with other persons, unless it is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary (Article 2(2)(b)). Directive 2006/54/EC provides the same for sex[20]. The disadvantage must therefore be linked to one of the protected grounds. In the case of augmentation, such links are not difficult to imagine:

- Workers who cannot use an exoskeleton because of a long-term health condition may fall under the concept of disability, which the Court of Justice understands broadly, as an impairment which, in interaction with various barriers, may hinder full and effective participation in working life[21].
- Older workers are more likely to have such conditions or to find adaptation to new devices more burdensome.
- Women may be disadvantaged if devices are available only in sizes designed for an average male body[22].
- A refusal motivated by deeply held ethical convictions might, at

[20] Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ L 303, 2.12.2000, pp. 16–22, Article 2(2)(b); 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), OJ L 204, 26.7.2006, pp. 23–36, Article 2(1)(b).

[21] CJEU, 11 April 2013, joined cases C-335/11 and C-337/11, HK Danmark (Ring and Skouboe Werge).

[22] Cf. Pote, Asbeck, Asbeck, *cit.*, on the exclusion of workers who do not fit the available sizes.

least in theory, be protected as a "belief", although recent case law of the Court of Justice suggests a rather narrow reading of this ground[23].

As regards justification, the employer will usually invoke legitimate aims such as health and safety or productivity. The decisive question is then whether calibrating work norms to enhanced bodies is really necessary, or whether the same aim could be achieved by less exclusionary means, e.g. by redesigning the workstation, to which Directive 89/391/EEC in any case gives priority. What anti-discrimination law does not cover is the refusal of augmentation as such, for economic, personal or simply precautionary reasons. A worker who is fully able to use the device but does not want to has no protected ground to rely on. This is a real gap, to which I return in the next section.

If the employer introduces a selection system favoring people using augmentation, this can lead to indirect discrimination against those who refuse modification for ethical, health, or economic reasons[24]. Labour law must therefore update the interpretation of "access to employment" to protect workers from technological coercion and unequal treatment[25].

Disability law also shows the inclusive side of augmentation. Under Article 5 of Directive 2000/78/EC, employers must take appropriate measures (reasonable accommodation) to enable a person with a disability to have access to, participate in, or advance in employment, unless this would impose a disproportionate burden on the employer. An exoskeleton or another assistive device can be exactly such an accommodation, opening jobs that would otherwise remain closed. The same logic, however, works in the other direction. Where a worker with a disability cannot use the device on which a new performance norm is based, the duty of reasonable accommodation requires adapting the work to that worker, not excluding them for failing to meet an "enhanced" standard[26]. In this sense, reasonable accommodation is a legal expression of the pluralism of abilities defended

[23] CJEU, 13 October 2022, C-344/20, L.F. v S.C.R.L.; CJEU (Grand Chamber), 15 July 2021, joined cases C-804/18 and C-341/19, WABE and MH Müller Handel. On the possible protection of a refusal to wear robotic devices as a "belief", and its limits, see Maffei, *cit.*, pp. 151-154.

[24] ILO, *cit.*

[25] On access to employment in the context of (pharmacological) enhancement see Avondola, *Potenziamento farmacologico occulto e accesso al lavoro*, in Delfino, De Vivo, Zaccaria (eds.), *cit.*, p. 37 ff.

[26] Directive 2000/78/EC, Article 5. On reasonable accommodation as a regulatory alternative to enhancement see Cordella, *Potenziamento farmacologico e fragilità da "efficientismo" lavorativo*, in Delfino, De Vivo, Zaccaria (eds.), *cit.*, p. 79 ff.

in this paper: it assumes that the same job can be done in different ways by different bodies.

Inspiration from Donna Haraway's thinking helps us understand why this benchmark is not neutral. If the worker's body is always part of a broader network of technical, organizational, and social relations, then performance norms are also co-created by technology and do not exist "outside of it". Augmentation not only increases individual capabilities but also changes the conditions of comparability. Thus, labour law faces the question of whether equality should consist in adapting everyone to an enhanced standard or in protecting the pluralism of abilities, so that technology can support but not determine the only acceptable measure of "normal" performance.

5. *Nita Farahany: Autonomy, Consent, and the Cost of Refusing Augmentation*

In the classic legal approach, the worker's consent to certain actions by the employer is often seen as an act of individual decision. In the context of augmentation, this understanding quickly proves insufficient. Consent is not given under conditions of symmetry between the parties but in a situation of relational dependence: under the pressure of organizational hierarchy, performance evaluations, the risk of marginalization, or the loss of a specific professional position.

In this sense, consent to using an exoskeleton, biometric system, or BCI interface can be formally voluntary but simultaneously materially burdensome. The worker may "choose" knowing that refusal means a slower work pace, a worse ability assessment, more difficult access to bonuses or to more prestigious tasks. Thus, the phenomenon of relational consent emerges: consent that is not the result of unconstrained autonomy but the result of embedding the individual in an organizational structure where technology co-creates the criteria for success and "normality".

From this perspective, labour law cannot limit itself to the question of whether consent has been formally obtained but must ask whether it has been given under conditions of a real alternative. In other words, does the lack of consent leave the worker in an equal position, or does it generate a systemic cost of refusal?

Data protection law already recognises this problem, at least as far as the processing of personal data is concerned. The GDPR states that consent

should not provide a valid legal ground where there is a clear imbalance between the data subject and the controller (Recital 43). European data protection authorities have repeatedly stressed that, because of the dependency inherent in the employment relationship, employees can give free consent only in exceptional circumstances[27]. This is particularly relevant for augmentation technologies, which typically process health data or biometric data used to identify workers. These are special categories of data whose processing is prohibited in principle (Article 9(1)). Outside of consent, such processing is possible mainly where it is necessary for obligations in the field of employment and social protection law, and only if Union or national law, or a collective agreement, provides appropriate safeguards (Article 9(2)(b)). Article 88 explicitly allows Member States and social partners to adopt more specific rules for the employment context, and where new technologies are likely to result in a high risk to workers' rights, a data protection impact assessment is required (Article 35)[28]. Some national legislators go further. The Polish Labour Code, for example, provides that the lack of consent may not be a basis for unfavourable treatment of a worker, and allows the processing of special categories of data on the basis of consent only where the data are provided on the worker's own initiative[29]. In other words, positive law already accepts that consent in employment is "relational" and does not by itself legitimise interference. The problem is that this recognition concerns data, not the body. The GDPR can limit what happens with the signals collected by an exoskeleton or an EEG headband, but it says nothing about whether a worker may refuse to wear the device in the first place.

Nita Farahany proposes in this context a shift in emphasis from the question of consent to the question of the integrity of the person, physical

[27] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (General Data Protection Regulation), OJ L 119, 4.5.2016, pp. 1-88, Recital 43; Article 29 Working Party, *Opinion 2/2017 on data processing at work*, WP 249, 8 June 2017; European Data Protection Board, *Guidelines 05/2020 on consent under Regulation 2016/679*, version 1.1, 4 May 2020, section 3.1.1.

[28] GDPR, Articles 9, 35 and 88. On the combined assessment of health and safety risks and data protection risks of wearable devices see D'Arcangelo, *cit.*, pp. 112-117.

[29] Polish Labour Code (Act of 26 June 1974, Kodeks pracy), Article 22^1 – § 2 and Article 22^1 – § 1. Article 22^1 – § 2 allows the processing of biometric data without the worker's initiative only where it is necessary to control access to particularly important information or to premises requiring special protection.

and cognitive[30]. In her view, the minimum level of protection is defined by the sphere that cannot become the subject of organizational pressure, even when consent is formally expressed. This includes, above all, mental privacy, i.e. the right to keep cognitive states, emotions, patterns of concentration, or fatigue inaccessible to the employer, and the consistency of identity, which is threatened when technology co-shapes behavior, work rhythm, or well-being in a permanent manner.

Farahany does not demand the creation of "new cyborg rights". On the contrary, she indicates that existing categories of human rights and labour law require reinterpretation in the face of neurotechnologies and systems interfering with biometric data. It is not so much a new catalog of rights as a new boundary line: even if technology brings organizational or health benefits, it cannot lead to a situation where refusal to connect the body or mind to the system becomes de facto impossible.

In this sense, integrity in Farahany's view serves as a "lower limit of protection", a reminder that labour law cannot reduce autonomy to an act of consent if the institutional environment makes the lack of consent unprofitable, risky, or socially disqualifying. Refusal of augmentation thus becomes a test case for equality: if the worker incurs costs (e.g. lower ratings, marginalization), it means that technology has become a quietly accepted standard, not voluntary support. Labour law must therefore guarantee space for the pluralism of embodiments, not just for "enhanced" bodies. The key question is not "does the worker have the right to refuse?" but "what are the costs of refusal?" If the worker who decides to remain with the "unenhanced" way of working incurs clear costs (lower efficiency ratings, less professional mobility, limited participation in tasks), then consent to augmentation ceases to be a choice and becomes a mechanism of assimilation to the enhanced pattern. Refusal thus reveals the tension between:

- formal equality (everyone can use the technology), and
- material equality (not everyone bears the same consequences of not using it).

In Farahany's view, refusal is diagnostic because it allows us to assess whether the organizational system respects the pluralism of embodiments or creates a situation where only the "assisted" body is a full-

[30] Farahany, *The Battle for Your Brain: Defending the Right to Think Freely in the Age of Neurotechnology*, St. Martin's Press, 2023.

fledged carrier of the ability to work. If the cost of refusal is structurally high, it means that technology has become a silent standard, not voluntary support.

It is worth noting that the idea of protecting the refusal itself was once close to entering EU law. In its 2016 opinion on civil law rules on robotics, the European Parliament's Committee on Employment and Social Affairs proposed the principle that refusing an implant, a prosthesis or an extension to one's body should never result in unfavourable treatment or threats regarding employment. The principle did not survive into the resolution adopted by the Parliament in February 2017[31]. In legal scholarship, it has been argued that an employer cannot unilaterally impose devices that act on the worker's body, especially when they serve only to increase performance, because such an order goes beyond the ordinary scope of managerial prerogative; their use therefore requires the worker's agreement[32]. This is an important step, but it brings us back to the starting point of this section. If the use of augmentation depends on the worker's agreement, the real question is not whether such an agreement was formally given, but what happens to those who do not give it. Today, the refusal of augmentation is protected only indirectly and in fragments:

- by health and safety law, arguably, where devices are insufficiently tested;
- by data protection law, as regards the data the devices collect;
- by anti-discrimination law, where the refusal can be linked to a protected ground.

There is no general rule saying that remaining "unenhanced" may not lead to negative consequences.

At this point, the question of autonomy and consent intersects with the issues of equality and indirect discrimination. Should labour law guarantee space for "unenhanced ability" or should it accept the gradual normalization of performance co-created by devices? The answer to this question will

[31] EP, Committee on Employment and Social Affairs, *Opinion for the Committee on Legal Affairs with recommendations to the Commission on Civil Law Rules on Robotics* (2015/2103(INL)), 9 November 2016; European Parliament resolution of 16 February 2017 with recommendations to the Commission on Civil Law Rules on Robotics (2015/2103(INL)). See Maffei, *cit.*, p. 151, fn. 55, and Maio, *cit.*, p. 530 ff.

[32] Maffei, *cit.*, pp. 150-151; Monda, *cit.*, pp. 158-159, with further references to Maio and Delfino.

determine whether refusal remains a real choice or just a formal possibility burdened with unacceptable costs.

6. *From Artifacts to Benchmarks: Where Does the Line of Dispute Really Lie?*

The debate around workplace augmentation most often focuses on the devices themselves: identification implants, exoskeletons supporting the musculoskeletal system, or BCI interfaces measuring cognitive reactions. In public and regulatory discourse, technology appears as a "material gadget", something that can be described, tested, certified, and possibly included in the framework of health and safety or data protection. This way of thinking favors questions like: Is the exoskeleton safe? Who has access to biometric data? How should an implant be classified under medical or technical device law? This approach, although of course necessary, is artifact-centric: it focuses on technical objects rather than on how their presence transforms the very structure of work norms and the understanding of the ability to perform work. As a result, the dispute over augmentation is often reduced to a discussion about the permissibility of using a specific technical solution, rather than reflecting on how the point of reference against which we assess the worker changes.

From the perspective of labour law, what is most important is not what device is introduced, but what changes in the benchmark: in norms of work pace, selection and evaluation criteria, definitions of "efficiency" and "availability". Exoskeletons, implants, or biometric systems begin to act in a norm-creating manner not because they are technologically advanced, but because they become an element of standard calibration, setting a new minimum of acceptable productivity, load resistance, continuous concentration, or readiness for work.

In this sense, augmentation shifts the dispute from the level of "should we use the device?" to the level of "according to what threshold do we assess the worker?". If this threshold is co-created by "enhanced" bodies, then unassisted workers may find themselves in a worse situation not because something has been taken away from them, but because the comparative standard has changed. It is here that issues of equality, indirect discrimination, and the cost of refusal are revealed: not in the technology itself as an artifact, but in its ability to reorganize norms. This shift from artifacts to benchmarks

also reveals the economic environment in which augmentation develops. It is here that the concept of turbocapitalism becomes relevant. In a competitive economy characterised by constant pressure to increase productivity, reduce costs and accelerate innovation, technological enhancement is unlikely to remain a neutral option available to individual workers. Once a technology makes higher output, longer concentration or greater physical endurance possible, market competition creates incentives to translate those possibilities into organisational expectations. The relevant mechanism is therefore not necessarily direct coercion by the employer. It may operate through competition itself. What is technically possible gradually becomes economically desirable, and what is economically desirable may eventually be transformed into a new benchmark of "normal" performance. From this perspective, turbocapitalism does not determine the use of augmentation, but it creates a structural pressure towards its normalisation. The danger is that technologies initially introduced as instruments of assistance, safety or inclusion may become mechanisms for raising the performance threshold. The distinction between enhancement as support and enhancement as a new productivity requirement therefore cannot be understood solely at the level of individual consent or technical regulation. It must also be analysed in relation to the economic forces that shape workplace standards.

At this point, the two theoretical frameworks that guide the considerations in this text meet. First, Haraway shows that the norm of work ability has always been co-constructed by the body and technology. Augmentation only makes this process visible. Her perspective unmasks the apparent naturalness of the benchmark and shows that there is no "pure" biology separate from tools, infrastructure, and work organization. Second, Farahany indicates a boundary of protection that, when crossed, undermines the autonomy and integrity of the person. Even if norms are co-created by technology, they cannot lead to a situation where refusal to connect the body or mind to the system becomes economically or socially impossible. Her voice introduces the dimension of a minimal guarantee, a "lower limit" below which labour law should not descend. This synthesis contains the theoretical core of the paper. The dispute over workplace augmentation is not primarily about the devices themselves but about the struggle over what benchmark will become the default point of reference, and whether labour law will recognize the pluralism of embodiments or consolidate the norm of performance co-created by technology.

It is worth citing here the example of Chinese enterprises that experimentally used EEG headbands to monitor the level of attention and fatigue of workers in production and transport. This can be described as an example of "digital discipline": workers are categorized according to cognitive performance in real time, which affects task allocation and evaluations. In response to these practices, a discussion about the right to mental privacy in the workplace has emerged. In such cases, it is crucial to reach a consensus on the acceptable limits of neurotechnology use in the workplace and to define what qualifies as invasive and unacceptable forms of neurosurveillance. It is unlikely that companies will invest in neurotechnology solely to increase employee safety. There are also other objectives, such as cost optimisation and productivity enhancement. It is therefore essential to look for a consensus between privacy and business interests[33].

The EU legislator has already reacted to some of these practices. Since February 2025, the AI Act has prohibited the use of AI systems to infer the emotions of a natural person in the workplace, except where the system is intended for medical or safety reasons (Article 5(1)(f)). Other AI systems used to monitor and evaluate the performance and behaviour of workers are classified as high-risk. Among other things, this entails the obligation to inform workers' representatives before such a system is put into service[34]. This is a significant step, but it also illustrates the limits of an artifact-centric approach. According to the Regulation itself, the notion of emotions does not cover physical states such as pain or fatigue, and systems detecting the fatigue of professional drivers or pilots are given as an example of what falls outside the ban[35]. A device monitoring the "alertness" or fatigue of a worker on a production line may therefore escape the prohibition, even though it produces exactly the kind of cognitive performance indicators described above. The law thus asks whether a given device infers emotions, not whether the data it produces will become a new benchmark against

[33] Muhl, Adorno, *Neurosurveillance in the workplace: do employers have the right to monitor employees' minds?*, in *FHD*, 2023, 5, https://doi.org/10.3389/fhumd.2023.1245619.

[34] Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence (Artificial Intelligence Act), OJ L, 12.7.2024, Article 5(1)(f), applicable since 2 February 2025; Article 6(2) and Annex III, point 4(b); Article 26(7).

[35] Regulation (EU) 2024/1689 (AI Act), Recital 18. See also EC, *Guidelines on prohibited artificial intelligence practices established by Regulation (EU) 2024/1689 (AI Act)*, February 2025.

which workers are sorted, evaluated and assigned tasks. It is precisely this second question that remains unanswered.

7. *Literary Heuristics: What Does Science Fiction Show?*

This section uses science fiction literature not as a prediction of technological development, but as a heuristic device for identifying how augmentation may reshape workplace norms, expectations and the conditions of labour-market participation. From this perspective, science fiction helps to make visible a process that may otherwise remain difficult to detect - the gradual transformation of augmentation from an optional form of support into a silent point of reference against which "normal" ability to work is evaluated. In practice, this means that labour law must focus not on the devices themselves but on the work norms that are co-created by them. I treat science fiction not as a futuristic vision of technological development but as a tool for shifting the analytical perspective[36]. Literature allows us to see the tensions associated with body augmentation (between agency, performance norms, and the boundaries of autonomy) before they become the subject of legal or institutional disputes. In the works of authors such as William Gibson, Madeline Ashby, or Richard K. Morgan, body-assisting technology does not appear as a neutral improvement but as an element of a broader social order that redefines what is considered "normal" ability to act. In this sense, literature acts like a beacon set not over regulations but over their possible consequences: it illuminates a fragment of the landscape that is not yet visible in real disputes but towards which small, everyday technical and organizational decisions are heading.

In Gibson's narratives, especially in those fragments where cybernetic modifications become an indispensable condition for functioning in the world of work and corporate contracts, the technologically assisted body is not a tool of emancipation but a condition for participation in the system. In "Neuromancer", augmentation is a prerequisite for survival in cyberspace, and those who cannot afford it are doomed to marginalisation. The protag-

[36] The use of literature as a "predictive" or heuristic tool is not new in labour law scholarship on robotics; see Gottardi, *Da Frankenstein ad Asimov: letteratura 'predittiva', robotica e lavoro*, in *LLI*, 2018, 4(2), p. 3 ff.

onist, Case, is punished by his former employers by having his nervous system damaged so that he can no longer connect to cyberspace: the capacity on which his livelihood depends is simply switched off. His later restoration comes at a price, as toxin sacs are placed in his bloodstream that will dissolve unless he completes his assignment. It is a literal image of the body as collateral for performance[37]. In "The Peripheral", Gibson goes further, showing a depressed near-future economy in which technologically mediated work, including bodies ("peripherals") operated at a distance, becomes one of the few ways to earn a living, and in which bodily modifications acquired in military service leave lasting traces[38]. Gibson's characters often have no real choice: either they accept augmentation or they lose their chance at a job, and the technologies are in the hands of large corporations that dictate the terms. Workers become dependent on a system that can exclude them at any moment. Thus, augmentation not only assists but also changes identity: the boundary between man and machine becomes blurred.

A similar logic can be found in Madeline Ashby's "Company Town", where continuous modernization and body optimization are embedded in the economy of the city-platform[39]. Its protagonist, Hwa, is one of the few inhabitants of the city without any bodily augmentation, and her "organic" status is precisely what sets her apart in a world where enhancement has become the norm. In these narratives, enhancement does not mark an individual advantage but shifts the point of reference: what was previously an exceptional improvement becomes a new minimum, a new "normality". Companies, on the other hand, treat their workers' bodies as property, reminiscent of contemporary biometric monitoring practices. In Richard K. Morgan's "Altered Carbon", where human consciousness can be transferred between bodies ("sleeves"), physical capacity ceases to be a biological given and becomes a matter of access to capital: the wealthy can afford new and enhanced bodies, while the poor take whatever is available[40]. Similar themes, though maintained in a more intimate, reflective register, appear in Martha Wells' "The Murderbot Diaries", where control, surveillance, and performance management interfaces show how technology can simultane-

[37] Gibson, *Neuromancer*, Gollancz, 1984.
[38] Gibson, *The Peripheral*, Penguin, 2015.
[39] Ashby, *Company Town*, Tor Books, 2016.
[40] Morgan, *Altered Carbon*, Gollancz, 2002.

ously support action and limit the margin of autonomy[41]. One of the most brutal visions is "The Windup Girl", in which Paolo Bacigalupi presents a world where genetic engineering and biotechnology have become tools of social and economic control in a future Thailand, where global corporations manipulate food and human DNA, creating new forms of inequality and dependence[42]. In this dimension, augmentation becomes a tool for the colonisation of the labour market by global corporations. A landmark work, although seemingly only touching lightly on issues related to the world of work, is of course Philip K. Dick's pioneering novel "Ubik", which shows how technology affects the perception of reality and the autonomy of the individual[43].

Literature allows us to capture the moment when augmentation begins to co-create the performance benchmark, before its material counterparts appear in HR policies or performance evaluation systems. Even if the scale of interference presented there is literarily exaggerated, the logic remains recognizable. The deeper technology enters into the relationship with embodiment, the harder it becomes to clearly separate "the decision of the person" from the action of technical and organizational infrastructure.

These literary images are not cautionary tales or simple metaphors for the future. Their function is heuristic: they help us see that body augmentation always takes place in a specific system of power, standards, and expectations towards "improved" efficiency. Science fiction enables us to notice phenomena that in the practice of the working world often remain invisible for a long time, because they first appear as minor shifts in norms, "neutral" evaluation criteria, or reasonably justified technical solutions. Literature, on the other hand, presents them immediately in structural form. This is a process in which body enhancement ceases to be an individual choice and begins to shape the very definition of equality, agency, and integration.

In this sense, the narratives of Gibson, Ashby, Morgan, or Wells do not replace legal analysis; they direct it. They suggest where lines of tension may appear in the future: where body-assisting technology becomes not only a tool for health protection or increased efficiency but also a silent point of reference against which "normal" ability to work is evaluated. Read in this

[41] Wells, *All Systems Red (The Murderbot Diaries)*, Tor.com Publishing, 2017.
[42] Bacigalupi, *The Windup Girl*, Night Shade Books, 2009.
[43] Dick, *Ubik*, Doubleday, 1969.

way, the novels translate directly into the legal questions discussed in the previous sections: who sets the performance benchmark and on the basis of which bodies (Section 2), what the refusal of augmentation costs and who bears that cost (Section 3), and whether regulation looks only at devices or also at the norms they create (Section 4).

8. *Trade Unions and Worker Augmentation*

Trade unions approach the phenomenon of worker augmentation (e.g. exoskeletons, implants, brain-computer interfaces) with caution and critical engagement, seeing both an opportunity to improve working conditions and the risk of new forms of control and inequality. In their view, European regulations are needed to protect workers from abuses. In 2016, the European Trade Union Confederation (ETUC) adopted a resolution on digitalisation calling for a fair digital transition based on good working conditions, a safe and secure work environment and strong trade union involvement in shaping the digital transformation of work.[44] According to ETUC, technologies should not lead to "digital Taylorism", i.e. maximizing control over workers, inequality, and technological coercion. However, no further action was taken by this trade union organisation with regard to the phenomenon of worker augmentation. Subsequent trade union policy initiatives, and more recently also EU policy, focused on the use of algorithms in the workplace[45].

This may be a mistake. Research shows that assistive technologies can reduce physical strain, lower the risk of injuries and prolong the working life of older people or people with disabilities[46]. However, to ensure transparency and inclusiveness, the implementation of these technologies would

[44] ETUC, *Resolution on digitalisation: "towards fair digital work",* adopted by the Executive Committee on 8-9 June 2016, https://www.etuc.org/sites/default/files/document/files/en-resol.digitalisation_adopted.pdf.

[45] See most recently European Parliament resolution of 17 December 2025 with recommendations to the Commission on digitalisation, artificial intelligence and algorithmic management in the workplace – shaping the future of work (2025/2080(INL)).

[46] EU-OSHA, *Exoskeletons in the workplace: Safety, health and ethical implications*, 2020, healthy-workplaces.osha.europa.eu; Bhat, Gavin, Warnell, Myall, *Mapping the evidence on occupational exoskeleton use for the workforce in healthcare, social care, and industry: A systematic scoping review*, in *WT*, 2025, 6, https://doi.org/10.1017/wtc.2025.10033.

need to be collectively negotiated, voluntary and protective of workers' autonomy[47]. This applies in particular to the risk of indirect discrimination. Workers who do not use assistive technologies (for health, ethical or economic reasons) may be marginalised if performance standards are set based on the capabilities of "augmented" workers[48]. It therefore seems reasonable for trade unions to demand the inclusion of provisions in collective agreements that guarantee voluntariness, data protection and non-discrimination[49], and to call for social dialogue on the implementation of these technologies[50]. This also applies to the financing of equipment by employers (e.g. exoskeletons as personal protective equipment) in order to prevent the deepening of inequalities[51].

Why is it so important for trade unions to start placing greater emphasis on dialogue around augmentation? Most studies indicate that even if the Industry 4.0 revolution does not result in a significant decline in the number of "human" jobs (which I consider too optimistic), there will still be a significant decline in sectors where automation and robotization are expected to work better. The only solution to maintain an adequate presence of "human" workers alongside robots seems to be augmentation[52]. However, it must be introduced in cooperation with trade unions to avoid the assimilation of new, excessive work performance standards. Despite conducting intensive desk research, I have not been able to identify any examples of collective bargaining around augmentation. This seems strange, considering e.g. the development of exoskeleton use on assembly lines and the immediate question of its impact on individual health and safety conditions. So, what can be said about solutions that interfere more with the body?

This absence is all the more striking because the legal channels for involving workers' representatives already exist:

- Directive 89/391/EEC. It requires that the planning and introduction of new technologies be the subject of consultation with workers

[47] ILO, *cit*.

[48] Adamczyk, Surdykowska, *cit*.

[49] ILO, *Work for a brighter future: Report of the Global Commission on the Future of Work*, International Labour Office, 2019.

[50] EP, *cit*.

[51] EU-OSHA, *cit*.

[52] Nikolova, Cnossen, Nikolaev, *Robots, meaning, and self-determination*, in *RPol*, 2024, 53(5), https://doi.org/10.1016/j.respol.2024.104987.

and their representatives as regards their consequences for safety and health (Article 6(3)(c)), and it provides for balanced participation in all health and safety matters (Article 11).

- Directive 2002/14/EC. It requires information and consultation on decisions likely to lead to substantial changes in work organisation (Article 4(2)(c)), which the introduction of augmentation technologies may clearly entail.
- The GDPR. It allows collective agreements to lay down more specific rules on the processing of workers' data (Article 88).
- The AI Act. It obliges employers to inform workers' representatives before putting a high-risk AI system into service at the workplace (Article 26(7)).[53]

Some national systems go further. In Germany, for example, works councils have a right of co-determination over the introduction of technical devices designed to monitor workers' behaviour or performance. They also have rights of information and consultation on the planning of technical installations, and may demand corrective measures where changes to workplaces clearly contradict established ergonomic knowledge[54]. The social partners themselves have also produced instruments that could serve as a model. The European Social Partners Framework Agreement on Digitalisation of 2020 sets out a joint process for introducing digital technologies at the workplace and addresses issues such as surveillance, data and the "human in control" principle[55]. In the Italian debate, it has been proposed that the introduction of wearable robotic devices as a safety measure should be agreed in national protocols between the social partners, the national accident insurance institution and the ministries responsible for labour and health, following the model of the shared protocols negotiated during

[53] Directive 89/391/EEC, Articles 6(3)(c) and 11; Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community, OJ L 80, 23.3.2002, pp. 29–34, Article 4(2)(c); Regulation (EU) 2016/679 (GDPR), Article 88; Regulation (EU) 2024/1689 (AI Act), Article 26(7). On the role of workers' representatives in the introduction of wearable devices see also D'Arcangelo, *cit.*, pp. 114-115, with reference to the recent Italian law on workers' participation (Law No. 76 of 15 May 2025).

[54] Works Constitution Act (Betriebsverfassungsgesetz), § 87(1)(6) and §§ 90-91.

[55] European Social Partners Framework Agreement on Digitalisation, ETUC, BusinessEurope, CEEP and SMEunited, June 2020.

the COVID-19 pandemic[56]. None of these instruments was designed with augmentation in mind. Together, however, they show that the absence of collective bargaining on augmentation is not due to a lack of legal tools. It is rather a question of trade union priorities and capacity.

Overall, one may get the impression that trade unions are still lack to confront a stark dilemma: defending traditional jobs and ultimately losing them in many cases, versus augmentation resulting in increased productivity and thus greater job security (for a few) but also in exposure to external interference with the employee's physicality. This dichotomy is so significant that this topic is not on the mainstream agenda of the European trade union movement.

One possible explanation for the limited trade union engagement with augmentation is the interdisciplinary and technically complex nature of the phenomenon. Augmentation is a relatively new issue that combines elements of technology, labour law, ethics, occupational health and safety and personal data protection. Many people involved in trade unions do not have sufficient technical knowledge to understand how exoskeletons, implants or BCI systems work, or what risks and benefits they entail.

Examples of misunderstanding:

- Exoskeletons are often seen as modern personal protective equipment, when in fact they can change the definition of "normal" performance and lead to new forms of discrimination.
- Identification implants are seen as a convenient solution, but they carry the risk of privacy violations and dependence on the employer.
- Biometric monitoring systems (e.g. heart rate, stress level measurement) are often seen as tools for improving safety, when in fact they can be used to control and evaluate employee performance.

Drawing on existing trade union positions on digitalisation and artificial intelligence[57], the following minimum recommendations can be formulated for trade unions:

- Voluntariness: augmentation cannot be mandatory.
- Data protection: ban on using biometric data for evaluation or disciplining workers (cf. Articles 9 and 88 GDPR).

[56] Maffei, *cit.*, pp. 149-150.

[57] ETUC, *Resolution: Artificial Intelligence for Workers, Not Just for Profit: Ensuring Quality Jobs in the Digital Age*, 2025, https://www.etuc.org/en/document/artificial-intelligence-workers-not-just-profit-ensuring-quality-jobs-digital-age.

- Financing: devices should be paid for by the employer, not the workers.
- Social dialogue: consultations with unions before introducing technology (Article 6(3)(c) of Directive 89/391/EEC).
- Alternatives: augmentation should not replace better working conditions (e.g. more staff, ergonomic workstations) (cf. the priority of collective over individual protective measures, Article 6(2)(h) of Directive 89/391/EEC).

9. *Summary and Tentative Recommendations: Between Inclusion and New Lines of Division*

Technological enhancement of the body, from exoskeletons to brain-computer interfaces, is not just a matter of new tools and technologies appearing in the workplace, as was the case in previous industrial revolutions. It represents a shift in the paradigm of human work, where the boundary between "natural" and "assisted" ability to work becomes fluid. As Haraway and Farahany show, the worker's body has always been part of a technological network, but augmentation radicalizes this process, making it an element co-defining norms of performance, safety, and equality. In practice, this means that the benchmark of "normal" ability to work ceases to be based solely on biology and begins to be co-created by devices, algorithms, and work organization. This, in turn, raises a fundamental question: can labour law continue to operate with categories derived from the "natural body" model? Another important question concerns the protection of pluralism of choices in the workplace, so that technology supports rather than forces assimilation to a new standard.

Augmentation technologies bring the promise of inclusion: they can reduce physical barriers, extend the careers of older people, or enable people with mobility limitations to work[58]. At the same time, however, they generate new lines of division. These can be described in three categories:

- "Enhanced" vs. "natural". Workers using augmentation may become "more valuable" from the employer's perspective, leading to pressure for "improvement", overt or indirect[59].

[58] EU-OSHA, *cit.*; Bhat, Gavin, Warnell, Myall, *cit.*
[59] ILO, *cit.*

– Indirect discrimination. Selection systems, performance evaluations, or work schedules calibrated to "enhanced" bodies may marginalize those who, for ethical, health, or economic reasons, do not use the technology. For example, if the pace of work or absence thresholds are set based on the capabilities of workers with exoskeletons, unassisted individuals may be treated as "unfit", even though their biological efficiency falls within previous norms.

- Privacy and biometric data. Devices collecting body data (e.g. movement patterns, stress levels) pose risks of surveillance, worker segmentation, and the use of data for personnel decisions[60].

For augmentation to become a tool of integration rather than exclusion, labour law must address four fundamental challenges:

a) Equality and Indirect Discrimination

– Reinterpretation of legal categories: Current frameworks (e.g. EU equality directives) prohibit discrimination based on disability, age, or sex, but do not account for technological enhancement as a potential source of inequality: the refusal of augmentation is protected only where it can be linked to one of the protected grounds. It is necessary to extend protection to the refusal of augmentation and ensure that work norms (e.g. pace, load) do not favor only workers with "enhanced" bodies/minds.

- Equality test: The law should examine whether points of reference (e.g. "normal performance") are set in an inclusive manner or are based on standards available only to some workers. To some extent, this test already exists in the justification requirement for indirect discrimination: calibrating norms to enhanced bodies should be accepted only where it is genuinely necessary.

– Reasonable accommodation: Assistive devices should be recognised as a possible form of reasonable accommodation for workers with disabilities, but the inability to use a device must never in itself become a reason for exclusion.

b) Autonomy and Consent

– Relational consent: Formal consent to use technology is not sufficient if the worker incurs the cost of refusal (e.g. lower ratings, limited access to tasks). Farahany emphasizes that the law must protect physical and

[60] Kühler, Wagner, Brey, Sienna, *D3.7: Proposal for an Ethical Framework for Human Enhancement (Version V1.0)*, 2020, https://zenodo.org/records/4275579.

cognitive integrity as a lower limit of protection: even if technology brings benefits, it cannot lead to a situation where refusal becomes economically or socially impossible[61]. Data protection law already recognises this with regard to personal data; the same logic should be extended to the use of devices acting on the body.

- Right to "unenhanced" work: The worker should have a real alternative, without professional consequences, if they decide not to use augmentation. The principle proposed in 2016 by the European Parliament's Committee on Employment and Social Affairs, according to which refusing an implant, a prosthesis or an extension to one's body should never lead to unfavourable treatment in employment, could serve as a ready-made model.

c) Data Protection and Privacy

- Data minimization: Collections of biometric data (e.g. from sensors or implants) should be subject to strict rules (GDPR, principle of proportionality).

- Transparency and control: Workers must know what data is collected, what it is used for, and who has access to it. The ban on using health data for discriminatory purposes (e.g. in promotions or dismissals) should be absolute.

- Beyond emotion recognition: The AI Act's ban on emotion recognition at work does not cover the monitoring of fatigue or "alertness". Such data should not be allowed to become a new performance benchmark through the back door.

d) Health and Safety

- Adapting work to the worker: Augmentation should be assessed against the principles of Directive 89/391/EEC, i.e. adapting work to the individual and giving priority to collective over individual protective measures. Devices should complement, not replace, the ergonomic redesign of workstations, and their introduction should be the subject of consultation with workers' representatives.

The debate on augmentation often focuses on the devices themselves (e.g. "Is the exoskeleton safe?", "Will the implant interfere with brain function?"). Meanwhile, the key question is: how does technology change work norms? Science fiction literature (Gibson, Ashby, Morgan) shows that body enhancement can become a new standard that redefines "normality", before

[61] Farahany, *cit.*

we even notice that it excludes those who cannot or do not want to use it. The reality of such challenges is evidenced by research conducted a few years ago by the global Citrix group, which found that more than half of the business leaders and professionals surveyed (51%) believe that by 2035, technology will provide workers with at least twice the productivity, including through wearable technologies cooperating with various systems, exoskeletons improving performance-related tasks, augmented reality glasses, and neuronally connected technologies controlling various devices[62].

Therefore, labour law must focus not on gadgets but on:

- Shifting the point of reference: Are performance, health and safety, or evaluation norms set in an inclusive manner?
- Cost of refusal: Does a worker who does not use augmentation have a real chance of equal treatment?
- Pluralism of embodiments: Does the legal system protect the diversity of abilities, or does it stabilize the norm based on "enhanced" bodies?

Based on the analysis of ILO documents (2019, 2025), the European Parliament (2022), and EU-OSHA (2020), as well as the EU legal framework discussed above, the following recommendations can be formulated:

Area	Actions	Responsible Entities
Voluntariness	Ensure that the decision to augment is informed, voluntary, and not associated with negative consequences for those who refuse.	Employers, trade unions, regulators
Data Protection	Introduce clear rules for processing biometric data (anonymization, minimization, purposefulness), including through collective agreements (Article 88 GDPR) and data protection impact assessments.	Labour inspectorates, data protection authorities, social partners
Financing	Subsidize protective devices (e.g., exoskeletons reducing injuries) from public funds or by the employer.	State, social security systems

[62] Minahan, Obeidullah, *Work 2035. How people and technology will pioneer new ways of working*, Citrix, 2019, https://be.insight.com/content/dam/insight-web/be_be/learn/pdf/Citrix-work-2035.pdf.

Area	Actions	Responsible Entities
Social Dialogue	Include augmentation topics in collective labour agreements and consultations with trade unions, using existing information and consultation rights (Directive 89/391/EEC, Directive 2002/14/EC, AI Act).	Social partners, employers
Safety	Determine limits on working hours under technological load and monitor the risk of secondary injuries.	Labour inspectorates, occupational health and safety specialists
Hierarchy of Prevention	Treat augmentation as a complement to, not a substitute for, collective measures and ergonomic workstation design.	Employers, labour inspectorates, OSH specialists
Equal Treatment	Do not calibrate performance standards exclusively to enhanced workers; provide reasonable accommodation where devices cannot be used.	Employers, equality bodies, courts
Education and Training	Provide training on device operation and legal education regarding rights and risks.	Employers, training institutions

Technological enhancement of the body is a mirror reflection of broader changes in the labour market: the increasing role of algorithms, uncontrolled data transfer, and pressure for maximum efficiency to meet the consumption stimulated by global corporations, which is a natural consequence of turbocapitalism. It reflects broader transformations of the labour market. In such an environment, the risk is not merely that new technologies will be introduced, but that the performance gains they make possible will gradually be transformed into new organisational benchmarks. Labour law faces a choice between Assimilation (acceptance that "normal" ability to work will increasingly depend on technology, which may deepen inequalities) and Inclusion (protection of pluralism of embodiments, so that augmentation is a tool of support, not coercion).

The objective is not to preserve a supposedly "natural" worker against technological change. It is to preserve a socially and legally constructed space in which unenhanced work remains a legitimate and equal form of participation in the labour market, rather than becoming a deviation from

a technologically elevated norm. The cyborgization of work is not the future; it is already happening. Whether it becomes an opportunity for greater justice depends on whether its implementation can be shaped collectively, transparently and through regulation. ILO and EU documents provide tools, but implementation must be swift and practical, from health and safety rules to data protection and anti-discrimination law. Actions should be taken now, before new lines of division become permanent.

Abstract

The paper examines how workplace body-enhancement technologies, including exoskeletons, implants, biometric monitoring, and brain-computer interfaces, challenge traditional labour law. It argues that these technologies redefine the concept of work ability by shifting the benchmark from natural human capacity to technologically assisted performance. While augmentation can improve occupational safety, extend working lives, and promote inclusion, it also creates new risks of indirect discrimination, privacy violations, and pressure to adopt enhancement technologies. The author proposes that labour law should protect the pluralism of human abilities rather than normalize enhanced performance as the new standard. Drawing on the theories of Donna Haraway and Nita Farahany, the paper emphasizes autonomy, bodily integrity, and the real cost of refusing augmentation. It also highlights the limited engagement of trade unions with these emerging issues and recommends stronger regulation, collective bargaining, data protection, voluntariness, and social dialogue to ensure that technological innovation promotes inclusion instead of creating new forms of workplace inequality.

Keywords

Augmentation, Labour Law, Inequality, Trade Unions.

Mark Bell*

Diverging Pathways: Accommodation of Worker Diversity and the Case-Law of the Court of Justice

Contents: 1. Introduction. 2. Embracing Workplace Accommodations: Persons with Disabilities. 2.1. The Nature of the Reasonable Accommodation Duty. 2.2. The Scope of Appropriate Measures. 3. Extending Workplace Accommodations to Persons with Caring Responsibilities. 4. Between Ambivalence and Antagonism: Workplace Accommodations and Persons with Religious Beliefs and Practices. 5. Conclusions.

1. *Introduction*

Writing in 2002, Professor Marco Biagi observed "further efforts must be made in order to make the principle of equality more effective in the labour market. In order to make this achievement more realistic non-traditional tools must also be experimented with"[1]. Although almost one quarter of a century has passed since these words, they continue to resonate with today's world of work. In the intervening period, workplace accommodations emerged in Europe as an innovative way of tackling labour market disadvantage. Accommodations can be described as measures that seek to remove or mitigate barriers to participation in employment. These adjustments can relate to physical infrastructure, equipment and technologies, but they can also extend to all the ways in which work is organised, including

* This article is based on a paper presented at the XXIII International Conference in Commemoration of Professor Marco Biagi held at the Fondazione Marco Biagi in March 2026.

[1] Biagi, *Equality and the Labour Market*, in *IJCL*, 2002, p. 127.

policies and procedures. Workplace accommodations are most frequently associated with advancing equality for persons with disabilities, but they are a general technique that can be used to respond to the obstacles that arise when human diversity encounters "standard" operating methods[2]. For example, consider an occupational requirement to work a variety of shifts at different times and days. This could be difficult to reconcile with the availability of care services for those workers with caring responsibilities. It could be problematic to combine with some workers' religious observance requirements. It might not be suitable for those workers whose health requires a regular pattern of rest. In these scenarios, modifying the standard work schedule could be a way to remove the barrier that it presents for certain workers. The premise of workplace accommodations is that treating all persons in an identical fashion can be inimical to the pursuit of equality. At times, providing different treatment is necessary to bring about "substantive equality"[3]. Yet genuine dilemmas arise around the circumstances in which equality demands a departure from treating people in the same manner[4]. In addition, accommodation requests can throw up thorny questions around how to balance the rights and interests of all the parties affected. This includes the person who needs the accommodation, their employer, co-workers, and third parties (such as customers and service-users).

EU anti-discrimination law explicitly endorses workplace accommodations in respect of persons with disabilities. Directive 2000/78, hereafter the "Employment Equality Directive", obliges employers to provide reason-

[2] Lawson, *Reasonable Accommodation Law in Europe: Where Now and Where Next?*, in O'Cinneide, Ringelheim, Solanke (Eds.), *Research Handbook on European Anti-Discrimination Law*, Edward Elgar Publishing, 2025, p. 209. See also, Davidov, Mundlak, *Accommodating All? (or: 'Ask Not What You Can Do for the Labour Market; Ask What the Labour Market Can Do for You')*, in Blanpain, Hendrickx (Eds.), *Reasonable Accommodation in the Modern Workplace: Potential and Limits of the Integrative Logics of Labour Law*, Wolters Kluwer, 2016, p. 195; Buonocore Porter, *Accommodating Everyone*, in *SHLR*, 2016, p. 85.

[3] Lawson, cit., p. 209. On substantive equality, see, inter alia, Fredman, *Discrimination Law*, 3rd edn, Oxford University Press, 2022, ch. 1; Loenen, *The Conceptualization of Equality and Non-discrimination as Legal Standards: From Formal to More Substantive Equality*, Brill, 2024, ch. 3; DeVos, *The European Court of Justice and the March Towards Substantive Equality in European Union Antidiscrimination Law*, in *IJDL*, 2020, p. 62.

[4] Minow, *Making All the Difference: Inclusion, Exclusion, and American Law*, Cornell University Press, 1990, pp. 20-21.

able accommodation for persons with disabilities[5]. In respect of the other protected characteristics found within EU anti-discrimination law, there is no express duty of accommodation, but indirect discrimination is prohibited. Article 2(2)(b) of the Employment Equality Directive states:

"indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons having a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons unless:

(i) that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary…"[6].

As discussed further in this article, there is potential for the prohibition of indirect discrimination to be interpreted in a way that places employers under an obligation to provide accommodations.[7] For example, an employer's requirement to work Saturdays is likely to put persons with particular religious beliefs at a particular disadvantage, e.g. Jews or Seventh Day Adventists who observe sabbath from sunset on Friday. If we assume that the employer has legitimate business reasons for requiring work on Saturdays, the question arises as to whether it is "appropriate and necessary" for the employer to apply this schedule to the employees affected. This test opens the door to consider whether it would be proportionate for the employer to make an adjustment to the schedule to accommodate the religious practices of certain employees.

This article explores how workplace accommodations have been handled within the case-law of the Court of Justice of the European Union

[5] Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation [2000] OJ L303/16, article 5.

[6] There is an equivalent prohibition of indirect discrimination on grounds of racial or ethnic origin in article 2(2)(b), Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin [2000] OJ L180/22. Indirect discrimination on grounds of sex is prohibited in several legislative instruments including article 2(1)(b), Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) [2006] OJ L204/23.

[7] See, *inter alia*, Bribosia, Rorive, *Reasonable Accommodation Beyond Disability in Europe?*, Office for Official Publications of the European Union, 2013, p. 38; Howard, *Law and the Wearing of Religious Symbols in Europe*, Taylor & Francis, 2019, p. 232; Vickers, *Conscientious Objections in Employment: Is a Duty of Reasonable Accommodation the Answer?*, in Adenitire (Ed.), *Religious Beliefs and Conscientious Exemptions in a Liberal State*, Hart Publishing, 2019, p. 186; Loenen, *cit.*, p. 161.

(CJEU). It identifies three situations where the Court has been confronted with applicants seeking workplace accommodations on the basis of EU anti-discrimination law. Section 2 considers case-law on persons with disabilities; section 3, case-law on persons with caring responsibilities; and section 4, case-law on persons with religious beliefs and practices. The examination of this case-law exposes considerable divergence in the Court's approach. The Court has embraced and expanded workplace accommodations for persons with disabilities. Recently, it has shown willingness to extend this case-law to persons with caring responsibilities, at least in respect of those caring for persons with disabilities. In contrast, the Court has been ambivalent towards the possibility of workplace accommodations for persons with religious beliefs. Section 5 concludes the article by analysing the reasons that may explain the variations within the case-law. Obviously, the legislative framework is the primary reason why accommodation duties are stronger in respect of persons with disabilities. The article finds, however, that this does not entirely account for the pattern of the Court's case-law.

2. *Embracing Workplace Accommodations: Persons with Disabilities*

This section examines the approach taken by the CJEU to making workplace accommodations for persons with disabilities. The duty to provide reasonable accommodation is set out in Article 5 of the Employment Equality Directive:

"In order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities, reasonable accommodation shall be provided. This means that employers shall take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer."

There has been a significant body of case-law that relates to this provision[8], but, for the purposes of this article, it is sufficient to concentrate on

[8] A more detailed account of this case-law can be found elsewhere in the academic literature. See, *inter alia*, Ferri, Lawson, *Reasonable Accommodation for Disabled People in Employment: a Legal Analysis of the Situation in EU Member States, Iceland, Liechtenstein and Norway*, Publications Office of the European Union, 2016, pp. 51-55; Daly, Whelan, *Disability in Employment*

the overall trajectory that emerges. This section contends that the Court has adopted an expansive interpretation of the legislation, which has been guided by an underlying goal of promoting labour market inclusion for persons with disabilities. Specifically, it examines two strands that emerge from the case-law: (i) the nature of the reasonable accommodation duty; and (ii) the scope of appropriate measures. It must be acknowledged that there are other aspects of the Court's case-law on disability rights that have attracted criticism[9]. Without contradicting those perspectives, the argument here is that its case-law on reasonable accommodation has been largely favourable towards disability rights.

2.1. *The Nature of the Reasonable Accommodation Duty*

Although Article 5 placed a duty to provide reasonable accommodation on employers, it did not clarify how it related to the prohibition of discrimination. Article 2 of the Directive identifies several forms of conduct that constitute "discrimination": direct discrimination, indirect discrimination, harassment, and an instruction to discriminate. A failure to provide reasonable accommodation is not mentioned in this list. The distinction thereby drawn between "discrimination" and "accommodation" could have been the basis for a more restrictive interpretation of the latter. Waddington pointed out that excluding reasonable accommodation from the concept of discrimination could have legal and practical consequences for complainants, such as leading to weaker sanctions and remedies[10]. Moreover, this

Equality Law: A Reappraisal of the Reasonable Accommodation Duty and Issues Arising in its Implementation, in *MJECL*, 2021, p. 744; Gyulavári, *Recent CJEU Case Law on 'Reasonable Accommodation' at Work: Towards the Recognition of a New Discrimination Form*, ERA Forum, 2023, p. 361; Waddington, Broderick, *Court Practices Regarding Disability Discrimination, Including Reasonable Accommodation, at EU and Member State Level, and in Light of the UN CRPD*, Publications Office of the European Union, 2024, pp. 28-38; Lawson, *cit.,* pp. 218-221.

[9] Academic literature has often criticised the Court's stance on the definition of disability: Broderick, Waddington, *Emerging Trends in Disability Anti-Discrimination Law in Europe*, in O'Cinneide, Ringelheim, Solanke (Eds.), *Research Handbook on European Anti-Discrimination Law*, Edward Elgar Publishing, 2025, p. 340. There has also been criticism of its use of the EU Charter of Fundamental Rights in relation to disability: Ferri, *The Unorthodox Relationship between the EU Charter of Fundamental Rights, the UN Convention on the Rights of Persons with Disabilities and Secondary Rights in the Court of Justice Case Law on Disability Discrimination*, in *European Constitutional Law Review*, 2020, p. 275.

[10] Waddington, *Equal to the Task: Re-examining EU Equality Law in the Light of the United*

placed EU law at odds with the UN Convention on the Rights of Persons with Disabilities (CRPD), which was adopted in 2006[11]. The Convention is clear that "denial of reasonable accommodation" constitutes "discrimination on the basis of disability"[12].

Although there was the potential for the distinction between "discrimination" and "accommodation" to prove a weakness in the Directive, an overview of the case-law reveals how the Court has avoided this jeopardy. At the outset, it identified that failure to provide reasonable accommodation could be the basis for a finding of direct or indirect discrimination. *Chacón Navas* concerned an employee who was dismissed following long-term sickness[13]. While the judgment is primarily concerned with the definition of disability[14], the Court held that:

"The prohibition, as regards dismissal, of discrimination on grounds of disability … precludes dismissal on grounds of disability which, in the light of the obligation to provide reasonable accommodation for people with disabilities, is not justified by the fact that the person concerned is not competent, capable and available to perform the essential functions of his post"[15].

In essence, this implies that it constitutes prohibited discrimination to dismiss a person with a disability if the provision of reasonable accommodation would have permitted the person to perform the essential functions of their position.

The Court's reasoning on the connection between discrimination and accommodation has become clearer with the evolution of the case-law. *Nobel Plastiques Ibérica* concerned an employee with a disability who had been selected for redundancy[16]. The criteria used included productivity rate,

Nations Convention on the Rights of Persons with Disabilities, in *European Yearbook of Disability Law*, 2013, p. 190.

[11] Sixty-first session of the General Assembly, A/RES/61/106, 12 December 2006.

[12] CRPD, article 2. See further, Ferri, Lawson, *cit.*, pp. 48-51; Broderick, Ferri, *International and European Disability Law and Policy - Text, Cases and Materials*, Cambridge University Press, 2019, pp. 96-106; Lawson, *cit.*

[13] Case C-13/05 *Chacón Navas v Eurest Colectividades SA* EU:C:2006:184.

[14] See further on this aspect, Waddington, *Case C-13/05, Chacón Navas v. Eurest Colectividades SA, judgment of the Grand Chamber of 11 July 2006,* in *CMLR*, 2007, p. 487; Waddington, *Saying All the Right Things and Still Getting It Wrong: The Court of Justice's Definition of Disability and Non-Discrimination Law*, in *MJECL*, 2015, p. 576.

[15] *Chacón Navas*, *cit.,* para 51.

[16] Case C-397/18 *DW v Nobel Plastiques Iberica SA* EU:C:2019:703.

level of multi-skilling on the job, and rate of absenteeism. The applicant argued that the adverse scores that she received under those criteria were linked to the effects of her disability. The CJEU accepted that these criteria could place persons with a disability at a particular disadvantage, so this was a potential case of indirect discrimination[17]. At this point, the Court brings into play the duty to provide reasonable accommodation. Specifically, the Court concluded that the selection criteria could not be justified if the employer had not taken appropriate measures to provide reasonable accommodation for the worker, prior to her selection for redundancy[18]. In justifying this conclusion, the Court stated that "it must be borne in mind" that the definition of discrimination on grounds of disability found in Article 2 CRPD includes denial of reasonable accommodation[19]. This demonstrated an awareness that the text of the CRPD was different to that of the Directive, but an apparent disposition on the part of the Court to avoid any substantive conflict of norms. Gyulavári argues that this case is a prime illustration of the nexus between the reasonable accommodation duty and exemptions from the prohibition of discrimination[20]. The accommodation duty becomes applicable in the context of determining whether the company's redundancy criteria were objectively justified.

In *Tartu Vanglu*, a prison officer had been dismissed because his hearing had fallen below the minimum level required for his role. He was not, however, permitted to use hearing aids during the assessment of his auditory acuity. The referring court sought guidance from the CJEU on whether this could constitute direct discrimination on grounds of disability. The CJEU held that this was a difference of treatment because of disability, so it fell within the concept of direct discrimination[21]. Such conduct may be permitted if it constitutes a genuine and determining occupational requirement[22]. In considering whether it was a justified occupational requirement, the Court recalls the employer's duty to provide reasonable accommodation. Specifically, permitting the employee to use a hearing aid during the assessment of his hearing was an "appropriate measure" that the employer could

[17] Paras 59-60.
[18] Para 71.
[19] Para 72.
[20] Gyulavári, *cit.*, p. 365.
[21] Case C-795/19 *XX v Tarta Vanglu* EU:C:2021:606, para 30.
[22] Directive 2000/78, article 4(1).

have taken[23]. This was in the context of an employee who had performed his role satisfactorily for 14 years and in the absence of any indication that permitting the use of a hearing aid would give rise to a disproportionate burden for the employer[24]. Accordingly, national legislation that required the employee to be dismissed with no ascertainment of whether reasonable accommodation could be provided was contrary to the Directive[25]. In this case, the Court converged the concept of direct discrimination with the duty to provide reasonable accommodation[26].

Recent case-law has continued in this trajectory. In *Pauni*, the Court had to determine whether a collective agreement that permitted the dismissal of an employee after 180 days of sick leave constituted indirect discrimination on grounds of disability[27]. The Court held that such a provision could only be justified if, prior to the employee's dismissal, the employer was required to provide reasonable accommodation that might enable the employee to return to work[28]. In summary, the Court has rejected an approach that considered "discrimination" and "accommodation" as substantively different legal norms. Instead, it has blended these concepts. This has minimised the significance of reasonable accommodation not being mentioned in the definition of discrimination in the Directive and, in so doing, it has favoured harmony with the CRPD. Nevertheless, Gyulavári points out that most of the Court's case-law achieves this outcome through connecting the accommodation duty with the exemption tests for direct and indirect discrimination[29]. As a matter of legal doctrine, this remains distinct from the notion that failure to provide reasonable accommodation is *per se* discrimination on grounds of disability. These cases also display a common theme of seeking to sustain the relationship between the employer and the

[23] *Tarta Vanglu*, cit., para 51.

[24] Para 51.

[25] Para 53.

[26] See also Case C-824/19 *TC and UB v Komisia za zashtita ot diskriminatsia and VA* EU:C:2021:862, where the Court held that direct discrimination could arise where there was a failure to investigate the possibility of reasonable accommodation.

[27] Case C-5/24 *Pauni* EU:C:2025:689. See further, Ylhäinen, *Indirect Discrimination and the Duty to Accommodate: Reframing the Boundaries of Directive 2000/78 in Bervidi and Pauni*, in *ELLJ*, 2026, p. 339.

[28] Paras 54-61.

[29] Gyulavári, *cit.*, p. 375. As discussed below, he points out that in this respect the Court's decision in *HR Rail* departs from the pattern of its other case-law.

employee. On several occasions, the Court has asserted the importance of not overlooking the potential consequences of job loss for persons with disabilities "who generally face greater difficulties than non-disabled persons in re-entering the labour market"[30].

2.2. *The Scope of Appropriate Measures*

Article 5 of the Employment Equality Directive places a duty on employers to take "appropriate measures". Guidance on the meaning of this term can be found in recital 20 in the preamble of the Directive, which states that these are:

"effective and practical measures to adapt the workplace to the disability, for example adapting premises and equipment, patterns of working time, the distribution of tasks or the provision of training or integration resources."

Although this indicates that a flexible approach should be adopted, the Court has played a critical role in confirming that appropriate measures should be interpreted broadly. This issue was central to the *HK Danmark* cases[31]. In these cases, the applicants developed medical conditions that prevented them continuing to work full-time. After a period of sickness absence, they were both dismissed from their jobs. Subsequently, their trade union brought proceedings arguing that they should have been offered reduced hours because of the duty to provide reasonable accommodation[32]. The employers argued that reducing working hours did not fall within the scope of "appropriate measures" according to Article 5 of the Directive. They contended that the reference to "patterns of working time" in recital 20 was limited to altering the "rhythms of work", such as providing more breaks for workers with disabilities[33].

These cases arose after the EU had ratified the CRPD[34] and the Court

[30] Cases C-335/11 and 337/11 *HK Danmark, acting on behalf of Jette Ring v Dansk almennyttigt Boligselskab; HK Danmark, acting on behalf of Lone Skouboe Werge v Dansk Arbejdsgiverforening, acting on behalf of Pro Display A/S* EU:C:2013:222, para 91; Case C-270/16 *Ruiz Conejero v Ferroser Servicios Auxiliares SA, Ministerio Fiscal* EU:C:2018:17, para 51; *Pauni*, *cit.*, para 50.

[31] *HK Danmark*, cit.

[32] Para 23.

[33] Para 51.

[34] Council Decision 2010/48/EC concerning the conclusion, by the European Com-

confirmed that this meant that the Employment Equality Directive "must, as far as possible, be interpreted in a manner consistent with that convention"[35]. It drew attention to the "broad definition" of reasonable accommodation found in Article 2 CRPD[36]. Accordingly, it held that reasonable accommodation encompasses the "elimination of the various barriers that hinder the full and effective participation of persons with disabilities in professional life on an equal basis with other workers"[37]. Ultimately, this was a purposive approach that favoured labour market inclusion[38]; if a reduction in working hours would allow the worker to continue in employment, then it fell within the concept of an "appropriate measure"[39].

HK Danmark concerned employees who wished to continue in their existing positions, albeit with reduced hours. A more challenging question was whether reasonable accommodation encompassed transfer to a *different* job within the same organisation. This was confronted by the Court in *HR Rail*[40]. The complainant was a trainee working as a technician on the Belgian railways. After one year, he was diagnosed with a heart condition, and this required the fitting of a pacemaker. The railway tracks contained electromagnetic fields, but the pacemaker was incompatible with repeated exposure to such fields. Consequently, the company's medical centre confirmed that he was unfit to continue in his existing position. The complainant was temporarily reassigned to the role of warehouseman, but he was dismissed after three months. According to the company's staff rules, reassignment in the event of disability was only available to permanent members of staff and not to trainees. The Belgian *Conseil d'État* sought an interpretation of Article 5 of the Employment Equality Directive in relation to whether it required an employer to assign an employee to another post where, because of disability, he was no longer able to perform the essential functions of his current position[41]. When considering the

munity, of the United Nations Convention on the Rights of Persons with Disabilities [2010] OJ L23/35.

[35] *HK Danmark*, cit., para 32.

[36] Para 53.

[37] Para 54.

[38] Broderick, Waddington, *cit.*, p. 351.

[39] *HK Danmark*, cit., para 56.

[40] Case C-485/20 *XXXX v HR Rail* EU:C:2022:85.

[41] Para 24.

wording of the Directive, recital 17 appeared to militate against such an interpretation[42]. It states:

"This Directive does not require the recruitment, promotion, maintenance in employment or training of an individual who is not competent, capable and available to perform the essential functions of the post concerned or to undergo the relevant training, without prejudice to the obligation to provide reasonable accommodation for people with disabilities."

In *HR Rail*, it was clear that, even after reasonable accommodation had been provided, the employee could no longer perform "the essential functions of the post concerned". Nevertheless, Advocate-General Rantos argued in favour of a purposive approach to the interpretation of the duty on the basis that reasonable accommodation was "the means to achieve substantive equality in a concrete and individualised situation of discrimination"[43]. Drawing inspiration from the CRPD and the EU Charter of Fundamental Rights (CFR), he contended that "people with disabilities should be kept in employment rather than being dismissed for unfitness, which should only be a last resort"[44]. The judgment of the Court followed his reasoning. Surprisingly, it made no reference to recital 17. Instead, it cited the definition of appropriate measures found in recital 20. This mentions "measures to adapt the workplace to the disability". In the view of the Court, adaptation of the "workplace" extended to reassignment to another position therein[45]. Gyulavári highlights that this case was also significant because it treated the duty of accommodation as a free-standing legal obligation, which was not dependent on a finding of direct or indirect discrimination[46].

The interpretation of provisions of EU law relies on a combined analysis of the text, context, and purpose[47]. *HR Rail* illustrates that the Court has been guided by purpose in its interpretation of Article 5 of the Employment Equality Directive. A stronger emphasis on the text of the Directive might have confined the duty to provide reasonable accommodation to

[42] Daly, Whelan, *cit.*, p. 748.

[43] Case C-485/20 *XXXX v HR Rail* EU.:C:2021:916, Opinion of AG Rantos, para 84.

[44] Para 68.

[45] *HR Rail*, cit., para 41.

[46] Gyulavári, *cit.*, p. 375.

[47] Lenaerts, *Interpretation and the Court of Justice: A Basis for Comparative Reflection*, International Lawyer, 2007, p. 1016. See, e.g., Case C-19/23 *Denmark v Parliament and Council (Adequate Minimum Wages)* EU:C:2025:865, para 106.

situations where the employee remains capable of performing the essential functions of "the post concerned"[48]. Instead, it relied upon other sources to take a wider view of when reasonable accommodation should be available. For example, it pointed out that Article 26 CFR speaks of "the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration"[49]. In *Ca Na Negreta*, the Court reaffirmed that reassignment to another position fell within the scope of reasonable accommodation[50]. In support of this conclusion, it cited also Article 27(1) CRPD on work and employment[51]. This mentions the situation of persons who acquire a disability during the course of employment and it requires states to prohibit discrimination in the "continuance of employment".

★★★

Standing back from the detail, the CJEU has proved to be a receptive venue for applicants seeking to rely upon the duty to provide reasonable accommodation[52]. Lawson and Waddington observed that there has been "clarity and resolution" in the Court's interpretation of Article 5 of the Employment Equality Directive[53]. It has sustained this approach by emphasising the need to interpret the duty in the light of the fundamental rights of persons with disabilities found in the CRPD and, more recently, the CFR. A practical focus on doing what it takes to promote the inclusion of persons with disabilities in the workplace has allowed the Court to eschew a narrow reading of the text of the Directive. This is particularly evident in its endorsement of job reassignment as a form of accommodation that must be

[48] AG Rantos argued that, "read broadly", the reference to the "post concerned" in recital 17 could be taken to mean the post to which the employee has been reassigned: *HR Rail*, cit., para 74.

[49] *HR* Rail, cit., para 42.

[50] Case C-631/22 *JMAR v Ca Na Negreta SA* EU:C:2024:53.

[51] Para 50.

[52] Miller makes the case that the whole body of the Court's case-law on disability rights has been "quite plaintiff-friendly": Miller, *The European Disability Rights Revolution*, in *ELR*, 2019, p. 88.

[53] Lawson, Waddington, *The Unfinished Story of EU Disability Non-discrimination Law*, in Bogg, Costello, Davies, (Eds.), *Research Handbook on EU Labour Law,* Edward Elgar Publishing, 2016, p. 494.

considered. The Court has yet to declare unequivocally that denial of reasonable accommodation constitutes a form of discrimination for the purposes of EU law. Nevertheless, it can be inferred from its integrated reading of the Directive's provisions that non-discrimination and accommodation are inextricably linked concepts.

3. *Extending Workplace Accommodations to Persons with Caring Responsibilities*

Persons with caring responsibilities can encounter barriers to participation in employment because of the challenges connected to combining working and caring. Given that women continue to be over-represented amongst those providing care, this issue is closely intertwined with gender equality in the labour market[54]. The value of workplace accommodations for those with caring responsibilities has been recognised by the EU legislator in the 2019 Work-life Balance Directive.[55].This created a right for certain employees to request flexible working arrangements for caring purposes[56]. In brief, this extends to employees with children up to at least the age of eight, as well as carers[57]. Workers can request to "adjust their working patterns", which includes "remote working arrangements, flexi-

[54] Waddington, *Carers, Gender and Employment Discrimination: What Does EU Law Offer Europe's Carers?*, in Moreau (Ed.), *Before and After the Economic Crisis: What Implications for the 'European Social Model'?*, Edward Elgar Publishing, 2011, pp. 103-107.

[55] Directive 2019/1158/EU on work-life balance for parents and carers and repealing Council Directive 2010/18/EU [2019] OJ L188/79. See further, Oliveira, De La Corte-Rodríguez, Lütz, *The New Directive on Work-Life Balance: Towards a New Paradigm of Family Care and Equality?*, in *ELR*, 2020, p. 295; Chieregato, *A Work-Life Balance for All? Assessing the Inclusiveness of EU Directive 2019/1158*, in *IJCLLIR*, 2020, p. 59; Weldon-Johns, *EU Work-family Policies Revisited: Finally Challenging Caring Roles?*, in *ELLJ*, 2021, p. 301; Bell, Waddington, *Similar, Yet Different: the Work-life Balance Directive and the Expanding Frontiers of EU Non-discrimination Law*, in *CMLRev*, 2021, p. 1401; De la Corte-Rodríguez, *The Transposition of the Work-Life Balance Directive in EU Member States (II): Considerable Work Still To Be Done*, Publications Office of the European Union, 2024.

[56] Directive 2019/1058, article 9. For a more detailed analysis, see Waddington, Bell, *The Right to Request Flexible Working Arrangements Under the Work-life Balance Directive - A Comparative Perspective*, in *ELLJ*, 2021, p. 508.

[57] "Carers" are defined as "a worker providing personal care or support to a relative, or to a person who lives in the same household as the worker, and who is in need of significant care or support for a serious medical reason": Directive 2019/1058, article 3(1)(d).

ble working schedules, or reduced working hours"[58]. The right to request flexible working arrangements for caring purposes is not the same as the duty to provide reasonable accommodation. Primarily, it places the employer under a procedural duty to consider and respond to the request, whereas reasonable accommodation is an obligation to *act*, ie to take appropriate measures[59]. Notwithstanding the important differences that exist between the two duties, they share a common premise. Both recognise that fostering inclusion in the labour market may require adaptation of the "standard" way of organising work.

Even if the Work-life Balance Directive does not include a duty to provide reasonable accommodation for persons with caring responsibilities, there is the potential for this to be derived from other provisions of EU anti-discrimination law. Indeed, several cases have reached the CJEU where workers sought adjustments to their working conditions because of caring responsibilities[60]. These cases mostly arose under related legal instruments, such as the Parental Leave Directive[61] or the Part-Time Work Directive[62]. The Court has not yet fully explored whether failing to provide an accommodation to a worker with caring responsibilities could constitute a breach of the prohibition of indirect discrimination on grounds of sex[63]. In contrast, the Court has confronted equivalent issues in relation to the duty to provide reasonable accommodation in the Employment Equality Directive and workers who are carers of persons with disabilities.

The Court's first venture into this terrain was *Coleman*[64]. This case concerned alleged discrimination encountered at work by the mother of a child with a disability. A preliminary issue in the legal proceedings was whether the prohibition of discrimination on grounds of disability could be relied upon by a person without a disability (the mother), but who experienced discrimination because of her association with a person with a disability (her child). In a seminal decision, the CJEU held that the Employment Equality Directive "applies not to a particular category of person but by reference to

[58] Article 3(1)(f).
[59] See further, Waddington, Bell, *cit.*, p. 516.
[60] Waddington, Bell, *cit.*, pp. 513-514.
[61] E.g., Case C-366/18 *Ortiz Mesonero v UTE Luz Madrid Centro* EU:C:2019:757.
[62] E.g., Case C-221/13 *Mascellani v Ministero della Giustizia* EU:C:2014:2286.
[63] On the potential for such a claim, see Waddington, 2011, *cit.*, p. 111.
[64] Case C-303/06 *Coleman v Attridge Law and Law* EU:C:2008:415.

the grounds"[65]. Consequently, direct discrimination on grounds of disability included a situation where an employee was treated less favourably because of their child's disability, and where care for the child "is provided primarily by that employee"[66]. In the course of its judgment, the Court acknowledged that "Directive 2000/78 includes a number of provisions which, as is apparent from their very wording, apply only to disabled people"[67]. Specifically, it mentioned the duty to provide reasonable accommodation, thus indicating that persons without a disability could not rely upon that provision. The decision in *Coleman* opened the door to the concept of "discrimination by association"[68], but simultaneously closed the door on reasonable accommodation claims being framed in this manner.

Seventeen years later, the Court revised its position in *Bervidi*[69]. This case concerned the mother of a minor child with "extensive and comprehensive needs arising from disability"[70]. The applicant worked as a station operator for the Rome underground transport system. Station operators had "alternating and rotating shifts", but she sought permanent assignment to a morning shift.[71]. This was to enable her to support her child's care programme, which took place in the afternoons. On a provisional basis, her employer assigned her to a fixed location with a preferential working schedule (compared to other employees), but it did not grant her fixed working hours on a permanent basis, as she had requested. In subsequent legal proceedings, the Italian Supreme Court of Cassation referred to the CJEU two key issues: whether a "family caregiver of a severely disabled child" could rely on the prohibition of indirect discrimination on grounds of disability, and whether the employer was under a duty to provide reasonable accommodation for such caregivers[72]?

It was not clear from *Coleman* that the prohibition of indirect discrimination on grounds of disability could be relied upon by carers of persons

[65] Para 50.

[66] Para 56.

[67] Para 39.

[68] See further, Waddington, *S. Coleman v. Attridge Law and Steve Law,* in *CMLRev*, 2009, p. 665; Connor, *Discrimination by association: a step in the right direction*, in *JSWFL*, 2010, p. 59.

[69] Case C-38/24 *Bervidi* EU:C:2025:690. See further, Waddington, *An Iceberg of a Judgment: Case C-38/24 Bervidi*, in *MJECL*, forthcoming.

[70] Para 20.

[71] Para 21.

[72] Para 32.

with disabilities. Article 2(2)(b) of the Employment Equality Directive refers to measures that "would put persons having … a particular disability" at a particular disadvantage. Waddington observed that recognising that indirect discrimination could occur by reason of association with the protected characteristic "would be in line with the broad purpose of the Directives, even though it would not be in accordance with a literal interpretation of the wording"[73]. In *Bervidi*, the Court opted for a purposive, rather than a literal, approach to interpreting this provision. It held that the rationale of its decision in *Coleman* was that discrimination *on grounds of* disability was not confined to persons with disabilities, but extended to those who experienced such discrimination "by association"[74]. Accordingly, the Court held that the Directive meant that discrimination by association could also take the form of indirect discrimination[75]. Notably, the Court argued that this was an interpretation of the Directive that would be compliant with various provisions of the CFR: Article 21(1) on the right to non-discrimination; Article 24 on the rights of the child; and Article 26 on the right of persons with disabilities[76]. The Court also pointed out that this was consistent with the interpretation of the right to non-discrimination found in the European Convention on Human Rights, as well as the CRPD[77].

The Court did not, however, stop at this point. Instead, it departed from the statement that it had made in *Coleman* about Article 5 of the Employment Equality Directive being limited to persons with disabilities. It leant heavily on a purposive interpretation of the reasonable accommodation duty in the light of the CFR and the CRPD; indeed, it pointed out that neither of those instruments were in force when the decision in *Coleman* was issued[78]. On the one hand, the Court identified obligations in both instruments to uphold the best interests of children with disabilities[79]. Through this lens, it concluded that providing reasonable accommodation for carers is beneficial for the persons to whom they provide care. On the

[73] Waddington, 2011, *cit.*, p. 124.

[74] *Bervidi*, cit., para 54.

[75] Para 55. This was also in line with existing case-law on the prohibition of discrimination on grounds of racial or ethnic origin: Case C-83/14 *CHEZ Razpredelenie Bulgaria AD v Komisia za zashtita ot diskriminatsia* EU:C:2015:480.

[76] Paras 57-58.

[77] Paras 60-64.

[78] Para 70.

[79] CFR, article 24(2), and CRPD, article 7(2).

other hand, the Court emphasised the broad nature of the duty to provide reasonable accommodation in the CRPD[80]. As discussed above, since *HK Danmark*, the Court has repeatedly drawn upon this aspect of the CRPD to favour an expansive reading of Article 5 of the Employment Equality Directive. In his Opinion, Advocate General Rantos drew attention to the interpretation of non-discrimination adopted by the UN Committee on the Rights of Persons with Disabilities (CmRPD)[81]. In General Comment No. 6, the Committee stated that "the obligations to prohibit all discrimination on the basis of disability includes persons with disabilities and their associates, e.g. parents of children with disabilities"[82]. Finally, the CJEU connected the concepts of indirect discrimination and reasonable accommodation. It argued that the prohibition of indirect discrimination by association would be "deprived of an important element of its effectiveness" if there was not an accompanying obligation to provide reasonable accommodation[83]. Again, this follows a pattern discussed in the previous section whereby the Court has integrated reasonable accommodation into the prohibition of discrimination.

Ultimately, the Court held that an employer is required:

"to make reasonable accommodation, within the meaning of Article 5 of that directive, in respect of an employee who does not himself or herself have a disability but who provides, to his or her child who has a disability, the assistance which enables that child to receive the primary care required by virtue of his or her condition, provided that that accommodation does not impose an unreasonable burden on that employer"[84].

There is no doubt that *Bervidi* represents a major extension of the concept of reasonable accommodation. Earlier academic literature had doubted that the Court could depart so radically from the literal wording of the Directive[85]. It is notable that the Court is careful to refer to a parent who is providing "the assistance which enables" his or her child "to receive the

[80] *Bervidi*, cit., paras 72 and 76.

[81] Case C-38/24 *Bervidi* EU:C:2025:184, Opinion of AG Rantos, para 38.

[82] CmPRD, "General Comment No. 6 (2018) on equality and non-discrimination" (2018) CRPD/C/GC/6, para 17.

[83] *Bervidi*, cit., para 74.

[84] Para 80.

[85] Ferri, Lawson, cit., p. 55; Lawson, *cit.*, p. 221.

primary care required"[86]. This approach can be welcomed insofar as it recognises that a working parent is very likely to be relying upon other sources of care, which might entail care that is tailored to the child's condition. This is subtly different to the expression used in *Coleman*, which referred to situations where care for the child "is provided primarily by that employee"[87]. It is also in keeping with the definition of carer in the Work-life Balance Directive, which refers to "providing personal care *or support*"[88].

The Court does not indicate whether others who provide assistance or care for persons with disabilities will fall within the scope of the reasonable accommodation duty. The referring court had asked whether "caregiver" could extend to "any person, whether a member of the family or a de facto cohabiting partner, who cares in a domestic setting"[89]. The CJEU held that this question was inadmissible because it was not clear how it linked to a case where the applicant was the mother of a child with a disability[90]. Nevertheless, it is evident that there are other types of caring relationship where a need for accommodation can arise. For example, demographic change draws attention to the situation of those who are caring for older relatives, often in circumstances where the older person has a disability. Notably, the Work-life Balance Directive includes caring for parents within its definition of "carer"[91]. The purposive nature of the reasoning of the CJEU in *Bervidi* supports the proposition that the duty to provide reasonable accommodation can be relied upon by carers of persons with disabilities, even beyond parents caring for children. In its judgment, the CJEU referred to point (x) in the preamble of the CRPD. This provides that "persons with disabilities and their family members should receive the necessary protection and assistance to enable families to contribute towards the full and equal enjoyment of the rights of persons with disabilities". After quoting this provision, the Court stated that "it follows" that there was "an obligation, on the employer, to adapt the working conditions of that employee"[92]. This provides a pos-

[86] There is a different formula used in para 77, which refers to an employee who "cares for a child who has a disability".

[87] *Coleman*, cit., para 56.

[88] Directive 2019/1158, article 3(1)(d).

[89] *Bervidi*, cit., para 32.

[90] Para 85.

[91] Directive 2019/1158, article 3(1)(e).

[92] *Bervidi*, cit., para 73.

sible basis upon which to recognise a duty of reasonable accommodation for "family members" caring for persons with disabilities. At the same time, the very notion of discrimination "by association" implies that some degree of proximity is required in order to bring the person under the protective cloak of the law.

In summary, *Bervidi* is a consequential decision. 25 years after the EU legislature enacted a duty of reasonable accommodation for persons with disabilities, the Court extended this obligation to parents who provide assistance and care for their children with disabilities. In so doing, the Court recognised that adaptations to the working environment, including in relation to working time, could play a role in supporting the participation of carers within the labour market[93]. This represents a continuity with the social inclusion rationale that is reflected in its case-law on reasonable accommodation for persons with disabilities. It is notable, however, that *Bervidi* relied on the prohibition of indirect discrimination combined with the duty to provide reasonable accommodation for persons with disabilities. This makes it less clear whether the Court would impose a duty to adjust working conditions in circumstances without any connection to disability, such as parents caring for children without disabilities. Such cases would have to rely entirely on the prohibition of indirect discrimination. As discussed in the next section, the Court has proven to be less receptive to this argument in the context of religious belief and practice.

4. *Between Ambivalence and Antagonism: Workplace Accommodations and Persons with Religious Beliefs and Practices*

Sections 2 and 3 of this article have demonstrated the expansive interpretation of reasonable accommodation in the CJEU case-law that pertains to disability. This section turns to examine workplace accommodations in relation to religious diversity. The fundamental right to freedom of religion encompasses the right to manifest religious beliefs. In EU law, this is enshrined in Article 10(1) CFR, which includes the right "either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance". It is well-established

[93] Para 77.

that the exercise of religious freedom may, under certain circumstances, give rise to a need for accommodation in the sense of being granted an exemption from generally applicable rules[94]. This occurs across a wide spectrum of law and policy; for example, the CJEU has decided several cases concerning legislative exemptions from animal welfare requirements in order to accommodate religious rites[95]. In the context of this article, it is most relevant to concentrate upon accommodation requests that arise in the course of employment[96]. These vary, but common issues that arise concern freedom to wear religious symbols, to have time off for religious observance, and where employees have a conscientious objection to certain activities.[97]. In the CJEU case-law, the issue that has predominated has been workplace dress-codes that prohibit the wearing of visible signs of religious, political or philosophical beliefs. This has given rise to a series of cases that all concern Muslim employees who wished to wear an Islamic headscarf, but who were not permitted to do so. There is a substantial body of academic literature on the variety of legal issues found in these cases[98]. For the purposes of this article, it is sufficient to focus only on the Court's view as to whether the Employment Equality Directive should be interpreted in a manner that would, in effect, require an employer to accommodate those employees who wished to wear religious symbols.

[94] Raza, *Religious Accommodation and its Limits*, Hart Publishing, 2024, p. 53.

[95] See further, Granet, *"As I Have Commanded Thee": Flemish Decrees and CJEU Jurisprudence Put Religious Slaughter Under the Knife*, in *ELR*, 2021, p. 380.

[96] For an overview, see Vickers, *Religious Freedom, Religious Discrimination and the Workplace*, 2nd edn., Hart Publishing, 2016; Alidadi, *Religion, Equality and Employment in Europe: The Case for Reasonable Accommodation*, Hart Publishing, 2017; Scarponi, *Gli "accomodamenti ragionevoli" in materia religiosa nell'evoluzione giurisprudenziale delle alte corti. Linee guida di tendenza e interrogativi aperti*, in *Diritto del lavoro OPEN Labour Law*, 2025, p. 142.

[97] Ringelheim, *Religion, Diversity and the Workplace: What Role for Law?*, in Alidadi, Foblets, Vrielink (Eds.), *A Test of Faith? Religious Diversity and Accommodation in the European Workplace*, Ashgate, 2012, p. 338.

[98] See, *inter alia*, Howard, 2019, *cit.,* p. 150; Raza, *cit.,* pp. 37 and 86; Van Den Brink, *The Protected Grounds of Religion and Belief: Lessons for EU Non-Discrimination Law*, in *GLJ*, 2023, p. 855; Spitaleri, *Religious Freedom and Employment Discrimination in the Case Law of the European Court of Justice,* in Paladini, Del Ángel Iglesias Vásquez (Eds.), *Protection and Promotion of Freedom of Religions and Beliefs in the European Context*, Springer, 2023, p. 215; Vickers, *"Nothing but Trouble", or Reasoned Inconsistency? The Development of Religion and Belief Protection since 2000*, in *IJDL*, 2025, p. 414; Mulder, *The Dialogue Between the Courts Revisited: An Analysis of National Preliminary References and Their Impact on Advancing CJEU Case Law on Religious Discrimination*, in *LLR*, 2025, p. 183.

The Court's first consideration of this issue was in the 2017 *Achbita* case[99]. This concerned a Muslim employee who informed her employer, G4S, that she would begin wearing an Islamic headscarf at work. Her employer responded that its "position of neutrality" meant that employees were not permitted to wear visible signs of religious, philosophical or political beliefs in the workplace[100]. Ultimately, she was dismissed because she would not comply with this policy. The CJEU rejected the argument that this constituted direct discrimination; instead, it recognised that the employer's requirement that employees "dress neutrally" might give rise to indirect discrimination if it placed employees of a particular religion or belief at a particular disadvantage[101]. With regard to objective justification, the Court accepted that "the desire to display, in relations with both public and private sector customers, a policy of political, philosophical or religious neutrality must be considered legitimate".[102]. The Court also held that prohibiting employees from wearing visible signs of political, philosophical or religious beliefs was an appropriate way of pursuing this aim, so long as it was applied "in a consistent and systematic manner"[103]. Consequently, the crux of the case was whether the prohibition of wearing visible signs was *necessary* to achieve the legitimate aim of displaying neutrality. The test of necessity asks whether less restrictive measures could have been sufficient to achieve the intended aim. This can also be described as application of the principle of proportionality[104].

Exploring whether the employer's requirement was proportionate opens the door to considering if adjustments could have been made that would have sufficiently attained the company's objective, while reducing the obstacles that this created for employees of a particular religion or belief. The nature of such an inquiry is quite similar to the type of questions that arise under the duty to provide reasonable accommodation. Indeed, this connection was identified in the legal proceedings prior to the Court's

[99] Case C-157/15 *Achbita, Centrum voor gelijkheid van kansen en voor racismebestrijding v G4S Secure Solutions NV* EU:C:2017:203.

[100] Para 13.

[101] Paras 30 and 34.

[102] Para 37.

[103] Para 40.

[104] Case C-417/23 *Slagelse Almennyttige Boligselskab, Afdeling Schackenborgvænge v MV and others* EU:C:2025:1017, para 144.

judgment. The European Commission argued that the company could have provided the option for employees of wearing a headscarf in a "matching colour and style" to the workplace uniform[105]. Alternatively, Advocate General Kokott identified the possibility of transferring the employee to a "back-office" position that did not involve direct contact with customers[106]. She pointed out, however, that the Directive only provided for reasonable accommodation in respect of persons with disabilities. Accordingly, while employers were free to explore "individual solutions tailored to the circumstances involved, one should not impose a particularly significant organisational burden on them"[107].

In contrast, Advocate General Sharpston argued that reasonable accommodation was an appropriate way of handling these issues. Her opinion was issued in the parallel *Bougnaoui* case, which also concerned a Muslim employee dismissed for wearing an Islamic headscarf[108]. On the question of whether it was proportionate for an employer to prohibit the wearing of visible signs of religious belief in pursuit of a policy of neutrality, Advocate General Sharpston drew attention to the need to balance the different rights and interests at stake: "the employer and employee will need to explore the options together in order to arrive at a solution that accommodates both the employee's right to manifest his religious belief and the employer's right to conduct his business"[109]. In an echo of the test for disability accommodation, Advocate General Sharpston accepted that it would be relevant to take into account any costs that arose in the process of making an adjustment: "an employer in a large undertaking can be expected to take greater steps to make a reasonable accommodation with his workforce than an employer in a small- or medium-sized one"[110].

[105] Case C-157/15 *Achbita, Centrum voor gelijkheid van kansen en voor racismebestrijding v G4S Secure Solutions NV* EU:C:2016:382, Opinion of AG Kokott, para 105.

[106] Para 108.

[107] Para 110.

[108] The factual scenario in *Bougnaoui* was, however, different in nature to that of *Achbita*, because the employer acted in response to a complaint from a specific client. This led the Court to focus its judgment in that case on the possibility of direct discrimination and the exceptions thereto: Case C-188/15 *Bougnaoui and Association de défense des droits de l'homme (ADDH) v Micropole SA* EU:C:2017:204.

[109] Case C-188/15 *Bougnaoui and Association de défense des droits de l'homme (ADDH) v Micropole SA* EU:C:2016:553, Opinion of AG Sharpston, para 128.

[110] Para 125.

In *Achbita*, the position adopted by the CJEU was closer to that proposed by Advocate General Kokott. On the one hand, it did not endorse an interpretation of the necessity test as giving rise to an obligation on the employer to search for an accommodation with the employee. On the other hand, its advice to the referring court indicated that some consideration should be given to the options available to the employer prior to the decision to dismiss the employee:

"it is for the referring court to ascertain whether, taking into account the inherent constraints to which the undertaking is subject, and without G4S being required to take on an additional burden, it would have been possible for G4S, faced with such a refusal, to offer her a post not involving any visual contact with those customers, instead of dismissing her. It is for the referring court, having regard to all the material in the file, to take into account the interests involved in the case and to limit the restrictions on the freedoms concerned to what is strictly necessary"[111].

This paragraph is framed in tentative language that conferred ample discretion on the referring court[112]. The implication is that the employer should have offered the employee the alternative of working in a role with no face-to-face customer contact, but only if making this offer would have imposed no "additional burden" on the employer. This is far removed from the duty of reasonable accommodation for persons with disabilities. That requires a wide-ranging search for any "appropriate measures" to remove the barrier. While the CJEU identifies a measure that could be taken in this situation (reassignment to different role in the organisation), it can be questioned whether the nature of the proposed adjustment can be reconciled with the values that underpin anti-discrimination legislation[113]. The Employment Equality Directive invokes "the need to foster a labour market favourable to social integration"[114]. Yet the Court implies that it would be appropriate for a company to transfer Muslim women who wear an Islamic headscarf to roles where

[111] *Achbita*, cit., para 43.

[112] Ultimately, the Labour Court of Ghent concluded that there was no indirect discrimination in this case: Van Drooghenbroeck, *Country Report Non-discrimination: Transposition and Implementation at National Level of Council Directives 2000/43 and 2000/78. Belgium*, Publications Office of the European Union, 2025, p. 64.

[113] Xenidis, *The Polysemy of Anti-Discrimination Law: The Interpretation Architecture of the Framework Employment Directive at the Court of Justice*, in *CMLR*, 2021, p. 1690.

[114] Directive 2000/78, recital 8. See also, Ringelheim, 2012, *cit.,* p. 352.

customers would not meet them in person. It is very difficult to reconcile this approach with the Directive's aim of social integration[115].

In the cases since *Achbita*, it is notable that the CJEU has not revisited the possibility of reassigning workers to back-office positions[116]. On the contrary, its decision in *Comune d'Ans* indicates that an employer may justify prohibiting the wearing of religious symbols even in respect of employees without customer-facing roles. That case concerned an employee of a municipality who was responsible for handling public contracts. This role was primarily back-office in nature[117]. In response to a request from the applicant to be permitted to wear a headscarf at work, the municipal board amended the terms of employment to enshrine a policy of "exclusive neutrality" that applied to all employees, irrespective of whether their roles involved engagement with the public[118]. The CJEU held that Member States, including lower tiers of government, "must be afforded a margin of discretion in designing the neutrality of the public service"[119]. It accepted that the municipality was acting in pursuit of a legitimate aim:

"an entirely neutral administrative environment can be effectively pursued only if no visible manifestation of beliefs – philosophical or religious in particular – is allowed when employees are in contact with users of the public service or with other employees, since the wearing of any sign, even a small-sized one, undermines the ability of that measure to achieve the aim allegedly pursued and therefore calls into question the consistency of that policy"[120].

[115] Xenidis, cit., p. 1690; Sharpston, *Shadow Opinion of Former Advocate-General Sharpston: Headscarves at Work (Cases C-804/18 and C-341/19)*, in *EU Law Analysis*, 2021, para 243, https://eulawanalysis.blogspot.com/2021/03/shadow-opinion-of-former-advocate.html, accessed 21 July 2026; Howard, *Religious Discrimination at the CJEU and the Social Inclusion Approach*, in *ELLJ*, 2024, p. 719.

[116] Cases C-804/18 and C-341/19 *IX v WABE eV and MH Müller Handels GmbH v MJ* EU:C:2021:594; Case C-344/20 *LF v SCRL* EU:C:2022:774; Case C-148/22 *OP v Commune d'Ans* EU:C:2023:924. See further, Mulder, *Religious Neutrality Policies at the Workplace: Tangling the Concept of Direct and Indirect Religious Discrimination. WABE and Muller*, in *CMLRev*, 2022, p. 1501; Howard, *OP v Commune d'Ans: Another Step in the Wrong Direction for Headscarf-Wearing Women*, in *ILJ*, 2024, p. 305.

[117] *Commune d'Ans*, cit., para 12.

[118] Para 15.

[119] Para 33.

[120] Para 39. It is notable that, notwithstanding the CJEU judgment in *Commune d'Ans*, the Liège Labour Court subsequently held that the actions of the municipality constituted

There is a difference between *Achbita* and *Commune d'Ans* because the former concerned a private sector employer and the latter involved the public sector. It is not entirely clear whether the Court would accept that a private sector employer is also entitled to prohibit wearing religious symbols amongst back-office staff because of the desire to create an "entirely neutral" environment.

The CJEU case-law could be read as being antagonistic towards workplace accommodation of religious employees. There are, though, points in these cases where the Court acknowledges that the right to manifest one's religious beliefs should be accorded some weight in workplace decision-making. In *WABE* and *Müller Handels*, the Court identified a variety of provisions of the CFR that were engaged, including freedom of religion and freedom of business[121]. It stated that "the assessment of observance of the principle of proportionality must be carried out in accordance with the need to reconcile the requirements of the protection of those various rights and principles at issue, striking a fair balance between them"[122]. This balancing act was, though, a task left to national authorities:

"in Directive 2000/78, the EU legislature did not itself effect the necessary reconciliation between the freedom of thought, conscience and religion and the legitimate aims that may be invoked in order to justify unequal treatment, for the purposes of Article 2(2)(b)(i) of that directive [on indirect discrimination], but left it to the Member States and their courts to achieve that reconciliation"[123].

The deference of the CJEU towards national decision-making in this arena means that Member States have options: they may permit employers to enforce "neutrality" policies[124], but they may also opt to provide stronger protection of freedom of religion via national law[125].

Whether one agrees or disagrees with the Court's case-law on religious symbols in the workplace, it is evident that its approach to the interpretation

indirect discrimination on grounds of religion and that the complete prohibition on wearing religious symbols was not objectively justified: Van Drooghenbroeck, *cit.*, p. 67.

[121] *WABE and Müller Handels*, cit., para 84.

[122] Para 84.

[123] Para 87.

[124] It is, though, necessary that such policies operate in accordance with criteria laid down by the CJEU; e.g., they must be applied in a "consistent and systematic manner": *WABE and Müller Handels*, cit., para 70.

[125] *WABE and Müller Handels*, cit., para 89.

of the Employment Equality Directive is markedly different in this context when compared to the case-law on disability accommodation discussed in sections 2 and 3[126]. There are few traces of the expansive approach to interpretation when one looks at the case-law on religious symbols. Instead, it is characterised by caution and deference to national authorities. While the Court recognises that the cases engage the protection of fundamental rights, it places emphasis on the competing rights at stake. The case-law strives to balance the right to manifest religious beliefs with Article 16 CFR on the freedom of business. In a vivid contrast, the Court has never invoked Article 16 CFR as a counterbalance to the right to reasonable accommodation for persons with disabilities. The final section of this article reflects upon the possible explanations for the divergent pathways of the case-law on workplace accommodations.

5. *Conclusions*

This article set out to identify the trajectories in the CJEU's case-law on workplace accommodations. Although accommodations are potentially relevant to each of the protected characteristics found in EU anti-discrimination law, the existing body of case-law has primarily explored this issue in relation to disability, caring responsibilities and religious practices. This article has established that there are differences in the approach of the CJEU to workplace accommodations in respect of each of these characteristics. Its case-law on reasonable accommodation for persons with disabilities has been largely ambitious and expansive. In respect of persons with caring responsibilities, the Court's case-law was initially cautious, but a turning point was reached in its 2025 *Bervidi* decision. This created a duty to provide reasonable accommodation for carers of persons with disabilities. The exact parameters of this duty remain to be explored, and the decision does not determine whether equivalent duties might arise for other carers (e.g. parents of young children). Nevertheless, this was a bold judgment that significantly extended the law. In contrast, the Court's stance on the accommodation of religious diversity in the workplace might be described as ambivalent (at best). It is true that the Court has acknowledged the need for a

[126] Vickers, *"Nothing but Trouble"*, cit., p. 425.

fair balance of all the competing rights and interests presented by such cases. Yet the scales appear to be tilted firmly in favour of the freedom of employers to stifle expression of religious identity in the pursuit of "neutrality". The Court's case-law does not prevent individual employers or individual Member States from being more generous in their protection of religious freedom in the workplace, but an employee seeking accommodation of their religious practices is unlikely to find a remedy in EU law at present.

On one level, there is a straightforward explanation of the different trajectories in the case-law: they reflect the content of the legislation that the Court is interpreting. The EU legislator chose to establish a duty of reasonable accommodation for persons with disabilities; it did not create any parallel obligation for other protected characteristics. The CJEU is, therefore, on solid ground when it is cautious about reading an accommodation duty into other provisions of anti-discrimination legislation. Yet the bare text of the legislation does not fully explain the Court's appetite for expanding the disability accommodation duty. Requiring employers to consider reassigning workers with disabilities to different jobs and extending the accommodation duty to carers of persons with disabilities are both instances where the Court's decisions sit uneasily with a literal reading of the Directive's provisions. Of course, it is well-known that the Court's interpretative methods are not based on the mere words of the text; instead, they draw heavily on the underpinning purpose of the law. The Union's ratification of the CRPD has provided a mandate for the Court to interpret expansively the reasonable accommodation duty. Notably, Article 27 CRPD establishes the objective of "a labour market and work environment that is open, inclusive and accessible to persons with disabilities".

Turning to the accommodation of religious diversity, this centres on the concept of indirect discrimination. The stance taken by the Court in the case-law on wearing religious symbols was not the only possible interpretation that it could have adopted. The Opinion of Advocate General Sharpston in *Bougnaoui* presented a coherent argument for interpreting the justification test for indirect discrimination in a manner that imposed some obligation on the employer to accommodate the employee's religious practices. The Court consciously chose to read the legislation in a more restrictive fashion[127]. In seeking to explain this choice, it seems credible that

[127] Howard, *Islamic Headscarves and the CJEU: Achbita and Bougnaoui*, in *MJECL*, 2017, p. 365.

this was influenced by the lack of consensus amongst the Member States in respect of managing religious diversity[128]. This is transparent in the Court's reasoning in *WABE* and *Müller Handels* where it expressed the view that the Employment Equality Directive:

"establishes a general framework for equal treatment in employment and occupation, which leaves a margin of discretion to the Member States, taking into account the diversity of their approaches as regards the place accorded to religion and beliefs within their respective systems"[129].

Yet deference to national diversity does not provide a complete account of the Court's reticence in this area. It is notable that other strands of its case-law on religious discrimination have not adopted this approach[130]. The Employment Equality Directive also contains an exception from the prohibition of discrimination in respect of differences of treatment by organisations with an ethos based on religion or belief.[131] Without entering into the details of the case-law on that topic, it can be observed that the Court has been rigorous in applying this provision and it has resisted arguments that it should respect the diversity of national legal traditions in that sphere[132].

Bearing this in mind, it can be postulated that there is a latent scepticism in the case-law about the concept of workplace accommodation of religious diversity. Arguably, this belies the Court's position on the legitimacy of neutrality policies. It has readily accepted the proposition that a company acts appropriately when it prohibits religious expression as a way of preserving an image of neutrality. The Court has not sought to probe the meaning of neutrality or the objectives that it seeks to attain. For example,

[128] McCrea, *Article 10,* in Peers, Hervey, Kenner, Ward (Eds.), *The EU Charter of Fundamental Rights: A Commentary* 2nd edn, Hart Publishing, 2021, p. 331; Ringelheim, *Headscarf Bans in the Public Workplace before the Court of Justice: OP v. Commune d'Ans or the Art of Ambiguity*, in *ELLJ*, 2024, p. 923.

[129] *WABE* and *Müller Handels*, *cit.,* para 86. See also the explanation of the Court's decision in *Commune d'Ans* by the President of the CJEU: Irish Centre for European Law, *Review of the CJEU in 2023*, 23 February 2024, https://www.youtube.com/watch?v=kf1wexkRRkE, accessed 21 July 2026.

[130] Ringelheim, 2024, *cit.*, p. 921; Sharpston, *cit.*, para 260; Vickers, *"Nothing but Trouble"*, cit., p. 424.

[131] Directive 2000/78, article 4(2).

[132] See further, van den Brink, *When Can Religious Employers Discriminate? The Scope of the Religious Ethos Exemption in EU Law*, in *European Law Open*, 2022, p. 89; Unruh, *Is German Religionsverfassungsrecht under Threat from the European Union?*, in *OJLR*, 2020, p. 1.

Ringelheim posits that neutrality could be interpreted as relating to *actions*: employees act neutrally when they treat all co-workers and third parties in the same manner irrespective of religion or belief. Instead, she points out that the Court has endorsed the much broader notion that neutrality is about *appearance*[133]. Ultimately, the CJEU's favourable disposition towards neutrality policies clashes with the basic premise of accommodating of religious diversity. The wide reading of neutrality conveys a secular norm where religious identity is left "at the door" when you go to work[134]. In contrast, an accommodationist approach embraces a pluralistic perspective that affords space for the inclusion of religion in public life[135].

This article has shown that the CJEU has adopted a different approach when faced with accommodation requests connected to disability and religion. Looking ahead, the implications of this for accommodation requests connected to other protected characteristics is less clear. As indicated in section 3, this is mostly likely to arise before the Court in the context of caring responsibilities. The Work-life Balance Directive has enacted a procedural right for parents of young children and carers to request flexible working arrangements for caring purposes. This "right to request" appears to preserve managerial discretion as to whether to accede to such requests[136]. It is easy to imagine that an employee whose request is denied by their employer might explore whether the failure to provide a workplace accommodation breaches other provisions of EU law. For instance, if a woman caring for a young child is refused permission to reduce her working hours, could this be indirect discrimination on grounds of sex? The existing body of case-law makes it difficult to anticipate the approach that the Court will take. It could build on its decision in *Bervidi* to shift in this direction or alternatively it could emphasise that reasonable accommodation is a disability-specific concept. What seems to be evident is that the direction that the Court takes cannot be explained purely by the wording of the legislation. Rather, it is strongly influenced by its understanding of the context and purpose of the law. This means that the hesitancy around religious accommodation may not necessarily be replicated in respect of other protected characteristics.

[133] Ringelheim, *cit.*, p. 918.

[134] *Achbita*, Opinion of AG Kokott, *cit.*, para 116.

[135] Raza, *cit.*, p. 44.

[136] Recital 36 of Directive 2019/1158 states "the employer should be able to decide whether to accept or refuse a worker's request for flexible working arrangements".

Abstract

The way in which work is organised can pose obstacles to participation because of workers' diverse personal characteristics. This is well-known in relation to persons with disabilities, but it can affect a wider range of workers, such as persons with caring responsibilities or persons with religious beliefs and practices. Providing "accommodations" in the workplace can entail adjustments to operational practices and policies, while keeping a balance with business requirements. This article explores how claims for workplace accommodations have been handled by the Court of Justice of the European Union in its interpretation of anti-discrimination legislation. It identifies divergent trajectories in the case-law on accommodation for persons with disabilities, persons with caring responsibilities, and persons with religious beliefs and practices. In part, this can be explained by choices made by the legislature. Yet the case-law also reveals the Court's understanding of the purpose of the law.

Keywords

Reasonable accommodation, Disability, Carers, Religion, EU law.

Matilde Biagiotti

Transforming Working Time for Gender Equality: the Four-Day Week as a Driver of Organisational Change*

Contents: 1. Introduction. 2. Work-life balance as a driver of gender equality within the European legal framework. 2.1. Working-time flexibility as a measure to promote gender equality. 3. Working-time reduction: the potential of the four-day working week to achieve gender equality. 4. The Italian case: gender inequalities and four-day working week experiments. 4.1. Legislative initiatives and corporate practices: evaluating short-week models through a gender lens. 5. Concluding remarks: towards a gender-responsive four-day working week.

1. *Introduction*

Despite regulatory progress and the implementation of policies promoting equality, women continue to face multiple obstacles in accessing the labour market and advancing in their professional careers in many European Member States. One of the most evident manifestations of such inequality is occupational segregation, which unfolds along both horizontal and vertical dimensions. Horizontal segregation refers to the tendency of women to be concentrated in sectors and professions with a predominantly female presence, generally characterised by lower economic and social recognition. Vertical segregation, on the other hand, highlights the underrepresentation of women in senior and managerial positions, revealing the persistence of barriers that hinder access to roles of greater responsibility and opportunities for career advancement. Another critical issue, often connected with

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these two phenomena, lies in the difficulty of reconciling private and professional life: women, indeed, continue to bear a disproportionate share of family responsibilities and unpaid care work, which consequently limits their full participation in the labour market[1].

This article analyses the main and most effective regulatory and contractual responses to the phenomenon of female occupational segregation, examining how everyday organisational practices – in particular those relating to working-time management – create and reproduce gender gaps and assessing the role played by institutions, legal systems and social partners in creating, confirming or counteracting such inequalities within the EU framework. Indeed, "time" constitutes the central element of the main existing work-life reconciliation tools: the use of leaves means – from the worker's point of view – a trade-off between the time allocated to professional activity and that dedicated to private life[2]; similarly, "part-time" work entails the renunciation of a portion of working hours in exchange for a greater amount of time for personal life; conversely, the most recently developed flexible work arrangements allow the work schedule to be adapted to individual needs and preferences of the worker, reconciling work time with free time without sacrificing one for the benefit – or to the detriment – of the other.

This article argues that working-time regulation should no longer be understood merely as an instrument of work-life reconciliation but as an organisational governance tool capable of promoting substantive gender equality.

[1] Aa.Vv., *The future of gender equality in the EU*, ETUI, 2026, pp. 16-18; ANPAL, *Conciliazione vita lavoro: sviluppo di policy. Analisi comparata internazionale*, 2019, pp. 6-11; Staffieri, *Armonizzazione dei tempi di vita e di lavoro*, in *DPL*, 2023, 29, pp. 1773-1774; Romano, Petruccioli, *Gender diversity management, culture inclusive e sfide dell'attualità. Una review sistematica della letteratura*, in *ESS*, 2020, 1, pp. 224-226, describe the phenomenon of *flex-insecurity*, whereby increases in female employment have not translated into improved labour-market access or job quality.

[2] Militello, *Tempi di lavoro e conciliazione. L'orario di lavoro scelto come strumento di parità*, in Aa.Vv., *Diritto di conciliazione. Prospettive e limiti della trasposizione della direttiva 2019/1158/UE*, in *Quaderno DLM*, 2023, 14, pp. 41-42, refers to a division between time allocated to productive work and time devoted to reproductive, care and assistance work. With regard to working time from a gender perspective: Chung, *Flexible working arrangements and gender equality in Europe*, European Commission, DG JUST, 2024; Lazzeroni, *Genere e tempi di lavoro*, in *MGL*, 2020, 1, pp. 43-57; ILO, *Working Time and Work-Life Balance Around the World*, 2022; Santagata de Castro, *Work-life balance, flessibilità dell'orario di lavoro e discriminazioni*, in this journal, 2023, 1, pp. 47-83. Concerning the individual right to work-life balance, see Zucaro, *Il diritto all'equilibrio vita-lavoro*, Giappichelli, 2024.

Methodologically, the article adopts a comparative legal approach combining the analysis of EU legislation, national implementing measures and selected best practices. The legislative analysis is complemented by an examination of collective bargaining, which is considered as an essential mechanism through which statutory rights are translated into organisational practices.

The research proceeds as follows. It begins by outlining the EU work-life balance regulatory framework, with a specific focus on Directive 2019/1158/EU ("WLB directive") and the implementation of flexible working arrangements (FWAs)[3]. It then traces the connection between flexibility and gender equality by cross-examining the organisational facilitators of FWAs with the corporate drivers of gender-equity policies, thereby identifying the conditions under which working-time flexibility can effectively foster gender-inclusive change. This analytical framework provides the basis for examining its most recent and innovative manifestation: the four-day working week. Finally, the analysis contextualises this instrument within the Italian employment landscape by evaluating both recent legislative proposals and company-level collective practices through a gender lens.

2. *Work-life balance as a driver of gender equality within the European legal framework*

The European legislator has recently adopted a series of measures that, directly or indirectly, affect the organisation of work across Member States from a gender perspective. These interventions follow the adoption of the European Pillar of Social Rights, which has proven to be a valuable tool for labour market inclusion and for managing structural vulnerability in the workplace.

Within the Pillar, principle no. 2 ("Gender Equality") and principle no. 9 ("Work-Life Balance") are of particular significance for the present analysis. The comparison with art. 33 ("Family and Professional Life") of the EU Charter of Fundamental Rights ("the Charter"), on which it is based, highlights several innovations. First, the Pillar emphasises the balance between

[3] Directive 2019/1158/EU of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU.

professional activity and family life – an aspect that is less explicitly stated in the title of art. 33 – and downgrades the concept of "professional life" to the narrower term "professional activity": this choice reflects contemporary challenges linked to digitalisation, overproductivity and overworking, which increasingly hinder the ability to "disconnect" from work[4].

The content of the Pillar's provision goes beyond that set out in the Charter in several respects. First, principle no. 9 extends the personal scope of the provision beyond parents to include carers, thereby recognising that care within the family context now extends beyond the care of children to include the care of sick or elderly people. Second, art. 33 of the Charter provides, as means of reconciling family and working life, the rights to protection against dismissal on grounds related to maternity, to paid maternity leave and to parental leave following the birth or adoption of a child. The Pillar represents a step forward in this respect as well, supplementing leave – the traditional means of work-life balance – with two additional mechanisms: the right to request flexible working arrangements and access to care services. With regard to leave, principle no. 9 specifies that it must be "suitable" and that women and men have equal access to special leaves of absence. In this respect, several scholars have credited principle no. 9 with moving beyond the gendered, mother-centred approach reflected in art. 33 of the Charter. In particular, while art. 33(2) expressly refers to "paid maternity leave", the reference to "parental leave" is not accompanied by an equivalent qualification as to payment. This textual asymmetry has been regarded in the literature as reinforcing a model in which care responsibilities remain primarily associated with women, rather than encouraging their more equal sharing between men and women[5].

Together with principle no. 2, principle no. 9 was subsequently operationalised through the WLB directive, which is part of the EU strategy to combat female occupational segregation[6].

[4] Eurofound, *Working anytime, anywhere: The quality of working time in the EU*, Publications Office of the EU, 2026, pp. 17-18. Maserati, *Prevedibilità dell'orario di lavoro e programmabilità dei tempi liberi nel rapporto full-time*, in *RGL*, 2025, 1, pp. 51-53.

[5] See Bell, *The principle of equal treatment and the European Pillar of Social Rights*, in *DLRI*, 2018, 160, 4, pp. 786-791; McGlynn, *Work, Family and Parenthood: the European Union Agenda*, in Conaghan, Rittich (eds.), *Labour Law, Work and Family*, Oxford University Press, 2005, pp. 217 and 228.

[6] For a general overview of the legislative measures driven by the European institutions, see Aa.Vv., *The future of gender*, cit., pp. 8-15.

The rationale guiding the European institutions in this field has evolved over time, in parallel with changes in societal attitudes towards the issue across different national contexts. The earliest legislative interventions, grounded in the traditional "male breadwinner" model, were gradually replaced by the "dual-earner" or "dual-career" paradigm[7]. However, this transition long collided with the "gender-blind" structure of directive 2003/88/EC[8]. By privileging flexibility in working-time arrangements in favour of employers and by conceptualising non-working time merely as rest and recuperation for a worker assumed to have no external care responsibilities, it proved structurally deficient in protecting those outside this paradigm[9]. While subsequent instruments – such as those on pregnant workers, parental leave and part-time work[10] – contributed to supporting women in managing care responsibilities, they failed to promote an equitable sharing of such tasks with male workers[11]. The focus on part-time work as the primary reconciliation tool further reinforced this imbalance. Rather than fostering substantive equality, part-time often consolidated the gendered division of care and served employers' organisational needs more than workers' genuine choices[12]. Ultimately, the limitations of traditional leaves and their unequal

[7] Romano, Petruccioli, *cit.*, pp. 229-232; Scarponi, *"Work life balance" fra diritto UE e diritto interno*, in *WP C.S.D.L.E. "Massimo D'Antona"*, 2021, 156, pp. 2-5; Calvellini, *Flessibilità e work-life balance: un percorso tra realtà e retorica*, in *Labor*, 2021, 4, pp. 410-413.

[8] Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time. Hereafter the "working-time directive".

[9] Zucaro, *Conciliazione vita-lavoro e gender gap nella cura. L'evoluzione legislativa nel prisma del quadro normativo europeo*, in *RGL*, 2022, 2, pp. 311-313, describes the first EU work-life balance measures as adopting a "mother-friendly" approach, based on the assumption that women alone were responsible for caregiving.

[10] Respectively: Council Directive 92/85/EEC; Council Directive 96/34/EC; Council Directive 2010/18/EU; Council Directive 97/81/EC. Directive 2019/1158/EU repeals directive 2010/18/EU. See Chieregato, *Conciliazione vita-lavoro: la nuova Direttiva UE sull'equilibrio tra attività professionale e vita familiare*, in *LG*, 2020, 2, pp. 126-128; Scarponi, *cit.*, pp. 2-5.

[11] Chieregato, *A Work-life balance for all? Assessing the inclusiveness of EU Directive 2019/1158*, in *IJCL*, 2020, 36, I, pp. 8-11.

[12] The literature on the subject is extensive: Barbieri, Cutuli, Guetto, Scherer, *Part-time employment as a way to increase women's employment: (Where) does it work?*, in *IJCS*, 2019, 60, 4, pp. 249-268; Beham, Baierl, Eckner, *When does part-time employment allow managers with family responsibilities to stay on the career track? A vignette study among German managers*, in *EMJ*, 2020, 38, 4, pp. 580-590; Brollo, *Occupazione femminile e flessibilità dei tempi di lavoro: il part-time*, in Brollo, Serafin (eds.), *Donne, politica e istituzioni: il tempo delle donne*, Forum Editrice

uptake by men and women, combined with the highly gendered concentration in part-time employment, have reinforced occupational segregation and the gender employment gap across European labour markets.

In response, the WLB directive explicitly aims to "achieve equality between men and women […] by facilitating the reconciliation of work and family life for workers who are parents, or carers" (art. 1), recognising that "limited incentives" for male caregiving and the lack of awareness-raising in this area "reinforces gender stereotypes and differences between work and care" (recital 11)[13]. To overcome these limitations, the directive introduces both new and strengthened individual rights to "paternity, parental and carers' leave", alongside the "right to request flexible working arrangements".

Among these, the latter represents one of its most innovative features: under art. 9, workers with children up to at least eight years of age, as well as carers, are entitled to request FWAs under certain conditions, recognising the value of flexible working hours to balance private life and professional activity. Pursuant to art. 3 of the directive, flexible working arrangements shall mean "the possibility for workers to adjust their working patterns, including through the use of "remote working arrangements", "flexible working schedules", or "reduced working hours" (emphasis added). This responds directly to the difficulties of balancing private and professional life within an occupational context characterised by extended and variable working hours[14]. Crucially, working-time programmability – the employer's inability to unilaterally alter it and the worker's ability to modify its duration

Universitaria Udinese, 2013; De Marco, *Disparità di genere e part-time involontario*, in *iQual*, 2025, 8; Calvellini, *cit.*, pp. 420-429; Militello, *Tempi di lavoro*, cit., pp. 45-49.

[13] Recital (6) of the Directive, on the other hand, states that work-life balance policies should contribute to gender equality by promoting women's participation in the labour market and the fair sharing of caregiving responsibilities between men and women. On the topic, Chung, *Flexible working arrangements*, cit., pp. 1-3. Concerning the instruments for the legal protection of parental rights within the context of Italian labour law, see Vallauri, *Genitorialità e lavoro. Interessi protetti e tecniche di tutela*, Giappichelli, 2020.

[14] Recital (10) of Directive 2019/1158 states: "work-life balance remains a considerable challenge for many parents and workers with caring responsibilities, in particular because of the increasing prevalence of 'extended working hours and changing work schedules' (emphasis added), which has a negative impact on women's employment". On the topic see also Salazar, *Conciliazione vita-lavoro: principio da costruire legislativamente e culturalmente*, in *DPL*, 2025, 21, pp. 1288-1292.

and allocation – becomes central when flexibility is conceived as a reconciliation tool[15].

By intervening on this second dimension of time programmability, the WLB Directive introduces a possibility to modify the traditional regulation of working time which, until now, has remained an area almost entirely subjected to the employer's control[16]. Moreover, by establishing a worker's right to request a flexible work organisation for reconciliation needs and imposing on the employer the obligation to provide a response, the European legislator has introduced a mechanism that – despite its limited prescriptive power, since any adjustments remain subject to the employer's approval – enables an effective assessment of organisational choices, paving the way for a judicial balancing between these choices and the individual worker's right to work-life balance.

In this perspective, it may also be argued that such a right could be invoked by workers in light of the "protective" safeguards provided by art. 21 ("Non-discrimination") and art. 23 ("Equality between women and men") of the Charter, which, together with the anti-discrimination directives, elevate non-discrimination to a general principle of EU law[17]. This approach finds further support in art. 11 and 12 of the WLB directive, prohibiting less favourable treatment or retaliatory dismissal against workers who exercise their rights to leaves, time off from work and FWAs[18].

From this perspective, a combined reading of the WLB directive and EU anti-discrimination legislation remains essential: while the former primarily introduces procedural rights (beyond the regulation of leave en-

[15] Calvellini, *cit.*, pp. 413-417, refers to the two concepts through the notions of a *minimal* or *defensive* dimension in the former case, and a *maximal* or *expansive* dimension in the latter. Militello, *Tempi di lavoro*, cit., pp. 43-45, emphasises the importance of the 'predictability' of 'working time' in the former case and of the 'right to influence the organisation of working time' in the latter. Maserati, *cit.*, pp. 43-45.

[16] Militello, *Tempi di lavoro*, cit., pp. 41-42 and 55-61, refers to dir. 2003/88/EC as "gender blind".

[17] Scarponi, *cit.*, p. 12 ff., argues that the Directive enables this by clearly defining rights holders and employers' obligations. According to Zucaro, *Conciliazione vita-lavoro*, cit., pp. 313-317, the Directive paves the way for recognising discrimination based on family caregiving responsibilities as a protected ground under EU anti-discrimination law. Waddington, Bell, *The right to request flexible working arrangements under the Work-life Balance Directive – A comparative perspective*, in *ELLJ*, 2021, 12, 4, pp. 520-521.

[18] Art. 11, Directive 2019/1158/EU. On the subject, see Chieregato, *Conciliazione vita-lavoro*, cit., pp. 130-133.

titlements), the latter confers rights of a substantive nature. Indeed, since caregiving responsibilities remain highly gendered, it appears probable that workers requesting FWAs will frequently belong to a group protected by anti-discrimination regulation on the basis of one or more protected grounds: gender, in the case of women (but also men) with caring responsibilities; disability, where the request is submitted by a worker with a disability; or, via discrimination by association, in the case of individuals who are not characterised by a protected ground but who are nonetheless closely associated with an individual who is so characterised[19].

Some questions remain as to the actual capacity of these two regulatory frameworks, when considered together, to achieve a genuine redistribution of care responsibilities from a gender perspective. This appears particularly interesting when considering that different work-life balance models can be identified within the European framework[20]: a "Mediterranean model" (including countries such as Italy and Spain), where family is considered the primary provider of assistance and care and where collective bargaining still plays a pivotal role in regulating the issue; a "Nordic model" (such as in the Netherlands, in Sweden or in Denmark), where a strong social State is accompanied by the interaction of both public and private conciliation policies; and a "Continental model" (such as that found in Germany and France), where a combination of public policies and economic incentives for the private sector is in place. Moreover, it is important to consider that the implementation of the WLB directive has been quite heterogeneous across the Member States, making it complex to identify a common pattern behind it[21]. This structural divergence, which ranges from bare-minimum

[19] Waddington, Bell, *cit.*, p. 527. A recent development concerning the extension of the obligation to provide reasonable accommodation in the field of disability was marked by the *Bervidi* judgment of the Court of Justice, delivered on 11 September 2025 (CJEU, 11 September 2025, case C-38/24, *Bervidi, G.L. v AB SpA*). The Italian referring court asked whether that obligation also extends to caregivers of disabled children. Relying on *Coleman*, the literal interpretation of art. 2(1) of Directive 2000/78/EC and its overall objective, the Court recognised indirect discrimination "by association".

[20] On the topic, see Salazar, *cit.*, pp. 1288-1292.

[21] Pursuant to art. 18 ("*Reporting and Review*") of directive 2019/1158/EU, Member States are required to submit data concerning the implementation of the directive at national level by 2 August 2027, thereby enabling the Commission to prepare an official report. On the implementation of the directive, see De la Corte-Rodríguez, *The transposition of the Work-Life Balance Directive in EU Member States (II): Considerable work still to be done*, European network of legal experts in gender equality and non-discrimination, 2023.

statutory compliance (as seen in countries aligning strictly with the ten-day paternity limit or the five-day carers' leave) to highly evolved frameworks typical of the Nordic and certain Continental systems, is far from neutral. Crucially, these diverse legislative interventions on work-life balance contribute to defining a specific national regulatory framework that is subsequently shaped and complemented by the initiatives of social partners, who play a pivotal role in resolving the concrete challenges linked to the promotion of gender equality.

2.1. *Working-time flexibility as a measure to promote gender equality*

The implementation of the WLB directive remains highly fragmented with regard to its most innovative instrument: flexible working arrangements. Their gender-equality potential, however, depends not only on formal availability but heavily on the substantial conditions governing access, use and institutional recognition. Member States diverge significantly as regards the typologies of adjustments available, whether workers hold an absolute or relative right to use them, the personal scope of entitlement and applicable statutory time limits[22].

First, national legislators have introduced a wide range of instruments aimed at improving work-life balance. Part-time work remains the mechanism most commonly promoted across Member States[23], often in combination with reconciliation schemes providing for flexibility both in the place of work – through, for example, teleworking – and in working time, by means of arrangements such as flexitime. The architecture of these national measures is closely linked to the legal nature of the entitlement granted to the workforce, establishing a sharp dichotomy between an absolute right to the arrangement and a merely relative right, which instead subordinates the adjustments to managerial approval. Crucially, while an absolute right to part-time work is widely integrated into the majority of domestic frameworks, broader FWAs (including teleworking and flexitime) generally constitute only a relative right. Notable exceptions are found in Portugal,

[22] De la Corte-Rodríguez, *cit.*, pp. 103-106.

[23] This is registered, for example, in Austria, Belgium, Spain, Hungary, Latvia, Poland and Slovenia.

Hungary, Ireland and Romania, where teleworking constitutes an absolute right for all workers[24].

Similarly, the personal scope of flexible work-life balance entitlement varies considerably across the European landscape. Albeit to a limited extent, a statutory distinction is drawn between public and private sector provisions in certain jurisdictions[25]. A more pronounced divergence emerges regarding the specific categories of eligible workers, dictated primarily by the maximum age of children up to which parents may claim these instruments (ranging from 8 to 15 years), as well as by the restrictive targeting to the narrow categories covered by the WLB directive. Conversely, several Member States opt for universal workforce entitlement: in Austria, part-time work and telework are recognised for all public sector employees; in Belgium, part-time work in the form of a four-day week is recognised within public employment; in Spain, all private sector workers with demonstrable reconciliation needs hold flexible working entitlements; finally, the Netherlands grants identical rights to all employees, provided that the employer retains at least ten workers[26].

This comparative overview shows that national legislation provides only a variable baseline for access to flexibility; its gender-equality potential ultimately depends on how social partners adapt and develop such measures within specific sectoral, territorial and organisational contexts[27]. Accordingly, assessing the gender-equality potential of working-time flexibility requires a cross-analysis of, on the one hand, the factors shaping its adoption and use within organisations and, on the other, the rationales underpinning corporate gender-equality and inclusion policies. Company-level collective bargaining is particularly relevant in this respect, as it is the level at which statutory rights are translated into organisational practices and adapted to specific workplace conditions.

The first analytical dimension concerns the conditions that enable or, conversely, hinder the adoption of flexible working-time arrangements within organisations. "Sectoral" characteristics are particularly significant in

[24] Eurofound, *Working anytime, anywhere*, cit., p. 57.

[25] This is registered, for example, in Austria and Belgium, where a distinction is made between public and private sector.

[26] De la Corte-Rodríguez, *cit.*, pp. 103-106.

[27] ILO, *The contribution of social dialogue to gender equality*, December 2020.

this respect[28]. Flexibility in the organisation of working time may be introduced relatively easily in some sectors, such as finance and real estate, whereas work organisation appears less adaptable in education, healthcare, commerce, social services, manufacturing and construction. In addition, "company size" constitutes a further structural factor influencing the decision to adopt flexible arrangements[29]. Previous research has shown that large companies are generally better positioned to implement a range of flexible arrangements, given the substantial resources they can invest. Similarly, such arrangements may also be introduced in small enterprises, especially as a result of simplified management structures and the possibility of relying on informal agreements within a limited workforce. Conversely, medium-sized enterprises often face greater difficulties, given the scale of resources required to maintain production while lacking the flexibility to rely on informal arrangements, which may prove impracticable in organisations characterised by a larger workforce and multiple departments[30]. Furthermore, workers' "occupational level" must also be taken into account: empirical data show that both skill level and hierarchical position significantly affect access to these measures, with highly skilled employees and managers tending to enjoy greater access to flexibility arrangements. Lastly, the degree of "influence exercised by trade union representatives", together with their stance on the issue, is equally significant, particularly in the context of collective bargaining aimed at securing flexible arrangements that adequately reflect workers' needs. The broader "national context" also plays a pivotal role in the dissemination of FWAs, with available data suggesting that positive attitudes towards such instruments are more common in labour markets with an established tradition of flexibility, whereas scepticism may arise where flexibility is less widespread[31].

Among the non-structural factors mediating corporate flexibility are "employers' willingness" and the prevailing "organisational culture". From the employer's perspective, the potential benefits of flexibility in-

[28] On the topic, see: Eurofound, *Working anytime, anywhere*, cit., p. 32; Chung, *Flexible working arrangements*, cit., pp. 8-10; Jacobi, Hamjediers, Naujoks, *Tailored to Women, Provided to Men? Gendered Occupational Inequality in Access to Flexible Working-Time Arrangements*, in *SIR*, 2025, 176, pp. 1181-1182.

[29] Jacobi, Hamjediers, Naujoks, *cit.*, pp. 1183-1184.

[30] Chung, *Flexible working arrangements*, cit., pp. 33-39.

[31] Chung, *Flexible working arrangements*, cit., pp. 48-53.

clude improved productivity and overall organisational performance, greater employee well-being and engagement, a healthier organisational culture, and lower absenteeism, work-related stress, illness and replacement costs[32].

The factors outlined above – capable of influencing organisational flexibility across different national, sectoral and corporate contexts – are equally identifiable in relation to the dissemination of work-life balance measures within broader gender equality programmes. In general, the strategic drivers prompting companies to implement these arrangements can be categorised into three distinct operational rationales. The "organisational driver" reflects the recognition that workload distribution affects both gender equality and individual and collective well-being, with implications for organisational productivity. The second driver, the "economic" one, responds to the need for greater financial support for arrangements – such as leave entitlements – that remain inadequately compensated. Finally, the "cultural driver" promotes interventions aimed at addressing disparities within the territorial context[33] in which the company is located and operates.

According to the literature, work-life balance measures and the flexibilisation of working hours exert positive effects across several dimensions that historically feed the gender gap. Primarily, flexibility supports women's continued participation in full-time employment. Certain flexible working arrangements and working-time reductions, such as the "four-day working week" examined in the subsequent sections, render full-time employment more attractive to women who currently work part-time to reconcile paid work with care responsibilities, potentially narrowing the pay gap associated with part-time employment[34]. Furthermore, while flexibility does not automatically guarantee a gendered redistribution of care burdens and family responsibilities, it nonetheless establishes the material conditions for a more equitable allocation of workloads and unpaid care work by enabling male workers to use such arrangements, ultimately fostering broader female labour market participation.

[32] On the topic, see ILO, *Guida per l'organizzazione dell'orario di lavoro*, 2025, pp. 1-2; De Spiegelaere, Piasna, *Perché e come ridurre l'orario di lavoro*, ETUI, 2018, pp. 26-45.

[33] Staffieri, *Armonizzazione dei tempi*, cit., pp. 1775-1779, categorises the three rationales underpinning WLB measures.

[34] Maraziotis, *Flexibility for equality: Examining the impact of Flexible working time arrangements on women's convergence in working hours*, in *BJIR*, 2024, 62, pp. 410-414.

Crucially, the gender impact of work-life balance measures depends significantly on the context in which they are implemented. As the previous analysis of organisational flexibility demonstrates, neither flexibility nor work-life balance measures are inherently gender-equal; their long-term efficacy depends on their design, workplace culture and their capacity to challenge, rather than reproduce, deeply rooted gendered assumptions about care work.

At the macro level, national attitudes towards gender equality and the size of the gender gap shape both the scale of intervention required and the conditions for achieving lasting results. Moreover, the specific characteristics of each productive sector, together with the gender composition of its workforce, are equally decisive for the development of effective work-life balance measures. This has implications, for instance, with regard to the intended beneficiaries of the measures adopted, who may constitute either the majority or the minority within a given sector, thereby generating the risk of marginalisation precisely of those individuals whom such measures are intended to include.

At the company level, similar dynamics may be observed, further shaped by the significance of organisational culture, both in terms of prevailing conceptions and structures of work and with regard to sensitivity to issues of Diversity, Equity and Inclusion. These elements assume particular importance when employers decide whether to adopt a comprehensive "gender mainstreaming" strategy across organisational and decision-making processes[35]. Furthermore, flexibility measures are increasingly interpreted through a gendered lens, with potentially adverse consequences for both women and men. Women remain disadvantaged by the assumption that they use, or will eventually use, flexible arrangements primarily for care purposes. Men who use such measures to manage family and care responsibilities, rather than for training or performance-related purposes, may likewise face negative repercussions[36].

Against this background, collective bargaining has often intervened in areas where legislation remains hesitant, pioneering the gender-sensitive management of working and non-working time. The concrete in-

[35] Chung, van der Lippe, *Flexible Working, Work-Life Balance, and Gender Equality: Introduction*, in *SIR*, 2020, 151, pp. 375-378.

[36] Jacobi, Hamjediers, Naujoks, *cit.*, pp. 1183-1184.

itiatives implemented by social partners and companies can be mapped across the same economic, cultural and organisational drivers previously identified.

The "economic rationale" drives companies to negotiate paternity, parental and carers' leave exceeding statutory minimum standards in duration and compensation, introducing highly flexible options such as hourly utilisation[37]. In addition, company-level collective agreements frequently expand paid time off for specific family contingencies, such as children's integration in nursery, medical appointments and care in the event of illness of children or of persons for whom the worker is recognised as a caregiver. Furthermore, companies design sophisticated welfare schemes that offer financial incentives and flexible benefits, including welfare credits for educational services, childcare subsidies, health screening grants, discounts for cultural events and training courses, as well as corporate bonuses upon childbirth or adoption.

Welfare schemes also form the core of interventions governed by a "cultural rationale", frequently deployed to compensate for structural shortcomings in local public infrastructures and services, for example through the establishment of services and partnership arrangements related to early childhood facilities and care provision. The corporate adoption of DE&I strategies and organisational models should likewise be understood as an integral part of this culture-driven approach[38]. These frameworks integrate a wide range of gender equality initiatives, from the drafting of ethical codes and corporate codes of conduct to the implementation of work-life balance measures and the unbiased organisation of work activities. Furthermore, they include the design of training and awareness-raising initiatives on diversity and equal opportunities, as well as systematic research and gender demographic monitoring – both within the company and across the broader sector – aimed at formulating targeted policy interventions[39]. In this way, a diversity-sensitive perspective can be structurally embedded across all corporate decision-making and organizational processes.

[37] Altilio, *La parità di genere nella contrattazione collettiva aziendale*, Adapt WP, 2025, 3, pp. 10-22; ILO, *The contribution of social*, cit.

[38] Staffieri, *Armonizzazione dei tempi*, cit., pp. 1773-1774.

[39] Santoni, Crespi, *Conciliazione famiglia e lavoro tra smart-working e diversity management. Una riflessione su pratiche e nuove semantiche*, in *ALSS*, 2022, 1, pp. 54-59; Altilio, *La parità di genere*, cit., pp. 27-28.

Finally, the "organisational rationale" leads companies to adopt advanced measures for the management of work activities, including flexible working hours, working-time accounts, facilitated part-time work, remote working and the adoption of shortened working weeks[40]. For instance, working-time accounts (such as the Italian *banca delle ore*) allow workers to accrue credits from overtime or unused leave, which may subsequently be used for training, health-related absences or work-life balance purposes[41].

In shaping the execution of work, collective bargaining operates on two analytical axes: spatial and temporal flexibility. With regard to the former, digital innovations have undoubtedly increased the remote execution of work through smart working, without affecting workers' overall remuneration[42]. However, while remote work has become an established work-life balance tool, its long-term efficacy has gradually been questioned, especially because it may significantly interfere with the amount of time devoted to work-related tasks, increasingly resulting in hyperconnectivity and thereby undermining the boundary between professional and private life that it was, conversely, intended to strengthen[43]. On the other hand, temporal flexibility involves the modulation of daily and weekly schedules based on the intersection of workers' needs and business predictability. In this domain, collective bargaining encompasses a wide range of established measures aimed at ensuring a degree of flexibility in entry and exit times

[40] On the topic, broadly, ILO, *Guida per l'organizzazione*, cit., pp. 20-26; Staffieri, *Pari opportunità e contrasto alla violenza di genere nella contrattazione collettiva*, in *DPL*, 2024, 47/48, pp. 2778-2779; Altilio, *La parità di genere*, cit., pp. 10-22; Chung, *Flexible working arrangements*, cit., pp. 5-7; Staffieri, *Armonizzazione dei tempi*, cit., pp. 1775-1779; Senatori, *La «nuova» conciliazione vita-lavoro e la contrattazione collettiva: una sfida che si ripete*, in *RGL*, 2022, 4, pp. 596-611.

[41] Moreover, it is possible to identify also working-time accounts based "on solidarity", built from the donation of hours by both the company itself and other workers. ILO, *Guida per l'organizzazione*, cit., p. 27; Altilio, *La parità di genere*, cit., pp. 10-22.

[42] Altilio, *La parità di genere*, cit., pp. 10-22.

[43] Calvellini, *cit.*, pp. 423-429; Militello, *Il work-life blending nell'era della on demand economy*, in *RGL*, 2019, 1. On the general issues concerning agile work, see Santagata De Castro, Monda (eds.), *Il lavoro a distanza: una prospettiva interna e comparata*, in *Quaderno DLM*, 2023, 13. For a general reflection on remote work and gender equality, see at least: Gabriele, *Il diritto alla disconnessione e il tempo per la cura: la dimensione multilevel e le prospettive di tutela*, in *DML*, 2023, 3; Schiavetti, *La parità di genere nei luoghi di lavoro, tra work-life balance e nuove tecnologie*, in *Federalismi.it - Focus: Lavoro, Persona, Tecnologia*, 2023, 4; Jansen, De Angelis, *Remote work vs part-time employment: a new work-family balance?*, INAPP WP, 2025, 139; Santoni, Crespi, *cit.*, pp. 45-66; Tinti, *Il lavoro agile e gli equivoci della conciliazione virtuale*, in *WP C.S.D.L.E. "Massimo D'Antona"*, 2020, 419.

(commonly referred to as "flexitime"), as well as flexibility in the management of lunch breaks and the personalised planning of weekly schedules[44]. These traditional arrangements are increasingly complemented by more recent experiments promoting the "four-day working week" as part of a broader reconsideration of work organisation, which may also pursue gender-equality objectives, as will be discussed in the next section.

3. *Working-time reduction: the potential of the four-day working week to achieve gender equality*

The previous section has shown that working-time organisation constitutes a central dimension of work-life balance policies and, more broadly, of organisational strategies capable of promoting gender equality. Against this background, the analysis now turns to the "four-day working week" (hereafter, also, "4DW"), the most ambitious recent attempt to rethink working-time organisation, and examines its potential implications for gender equality.

The four-day working week constitutes a new model of work organisation whereby standard weekly working hours are distributed over four days rather than five. Two principal modalities may be distinguished: the first entails a reduction in the overall number of weekly working hours without any loss of salary (a "reduced four-day week"); the second consists in the redistribution of the standard weekly working hours over four days without any reduction in total hours, commonly described as "compressed four-day week[45]". Both models have gained increasing attention in light of recent developments, including the reorganisation of work during and in the immediate aftermath of the Covid-19 pandemic, as well as broader labour market dynamics such as the phenomenon of "great resignations" and the persistent gender employment gap[46].

[44] ILO, *Guida per l'organizzazione*, cit., pp. 20-26.

[45] Del Frate, *Studio sulla flessibilità funzionale dell'orario di lavoro*, Giappichelli, 2024, p. 128; Chung, *Flexible working arrangements*, cit., pp. 76-78; Carcano, *Accordi sulla "settimana corta": vantaggi e limiti*, in *DPL*, 5, 2024, p. 298.

[46] Aa.Vv., *Work Time Reduction: A Critical Analysis of the Main Arguments for Adopting a 4-Day Workweek*, in Machado (ed.), *Human Resource Management in a Disrupted World, Lecture Notes on Multidisciplinary Industrial Engineering*, Springer Nature Switzerland, 2025, pp. 334-337.

The four-day working week is not an entirely new instrument; rather, it must be placed within a broader series of interventions which, at both international and supranational levels, have progressively contributed to the reduction of working time[47]. Given the centrality of working hours within the Western model of labour regulation – where they function as the primary metric for measuring work performance and determining remuneration – their regulation has historically proven complex, considering also that they are managed across multiple regulatory levels, such as statutory legislation and collective bargaining[48].

This structural complexity is likewise evident in the implementation of the four-day working week. As a form of working-time reduction, this instrument must be assessed within the broader framework outlined above: not as an inherently gender-equal model, but as an organisational arrangement whose effects depend on its design, the surrounding institutional context and its interaction with wider equality policies.

To fully evaluate its transformative potential, it is necessary to examine the principal drivers encouraging the adoption of the four-day working week across three distinct yet interconnected analytical perspectives: that of workers, that of companies and employers, and that of society at large. From the employees' standpoint, the reduction of working time – particularly in the form of a "reduced" four-day week – fosters substantial improvements in working conditions. These include enhanced work-life balance, reduced physical and mental fatigue, lower occupational stress and expanded opportunities for personal self-realisation and overall quality of life[49]. From the employers' perspective, organisational benefits include enhanced individu-

[47] ETUC, *Bargaining for working time reduction. ETUC Study on Working Time Reduction in Collective Agreements*, 2025, pp. 36-46; Eurofound, *Working time reduction and its impact on productivity: A systematic literature review*, 2026. Del Frate, *Prove di sostenibilità per la c.d. four day week, tra contrattazione collettiva e poteri unilaterali*, in Aa.Vv., *Tempi di lavoro, misure di conciliazione e welfare negoziale tra legge e contratto collettivo*, Adapt University Press, 2024, pp. 67-70; Aa.Vv., *Work Time Reduction*, cit., pp. 334-337; Cabrita, *Four days a week? Europe debates shorter working times*, Eurofound, 6 October 2025; Cazzola, *Politically (in)correct - Settimana corta o weekend lungo?*, in *Boll. Adapt*, 2023, 14.

[48] Ferrante, *L'orario di lavoro tra presente e futuro*, in *LLI*, 2022, 8, 1, pp. 115-125; Del Frate, *Prove di sostenibilità*, cit., pp. 77-80; Aa.Vv., *Analisi e formulazione di ipotesi di riduzione di orario di lavoro a parità di salario*, Inapp paper, 2026, 63, pp. 7-9.

[49] De Spiegelaere, Piasna, *cit.*, pp. 25-45; Aa.Vv., *Work Time Reduction*, cit., pp. 338-340; Carcano, *cit.*, pp. 300-301.

al and collective productivity, lower absenteeism rates and reduced turnover-related costs[50]. Additional time available to workers may also be devoted to training and professional development, thereby strengthening human capital within the enterprise[51]. Furthermore, the adoption of the four-day working week requires a structural reorganisation of workloads and business processes, offering an opportunity to modernise workplace models alongside broader transformations driven by digitalisation and sustainability goals. In addition, higher employee satisfaction and well-being foster staff retention, thereby supporting long-term organisational growth and enhancing corporate reputation[52]. Indeed, in contemporary labour markets, adopting innovative and socially responsible working models – as occurs with the implementation of DE&I frameworks – constitutes a significant competitive advantage in attracting talent[53]. Finally, at the macro-societal level, the four-day week promotes social, economic and environmental sustainability. On the one hand, reduced commuting and the periodic closure of workplaces can lower energy consumption and carbon emissions, while additional non-working time may foster more sustainable individual consumption patterns and civic participation[54]. On the other hand, positive impacts extend to broader employment dynamics: a reduction in individual working hours can facilitate job redistribution, thereby generating new employment opportunities, while more adaptable schedules enable older workers to extend their participation in the labour market, strengthening the sustainability of pension systems and mitigating demographic pressures[55].

The implementation of the four-day working week is shaped by the same structural, organisational and cultural conditions previously identified in relation to flexible working arrangements. Although these factors operate differently depending on whether a "reduced" or a "compressed" four-day week is involved, they remain decisive in determining both the feasibility of the measure and its capacity to promote gender equality.

[50] Eurofound, *Working time reduction*, cit., pp. 5-9 and the research conducted in Chapter 3 (pp. 32-37).

[51] Chung, *Flexible working arrangements*, cit., pp. 76-78.

[52] ETUC, *cit.*, pp. 15-18; Eurofound, *Working time reduction*, cit., pp. 42-44.

[53] Jain, Chouliara, Blake, *From Five to Four: Examining Employee Perspectives Towards the Four-Day Workweek*, in *AD*, 2025, 15, 3, 114, pp. 5-8.

[54] De Spiegelaere, Piasna, *cit.*, pp. 35-37; Aa.Vv., *Work Time Reduction*, cit., pp. 344-345; Carcano, *cit.*, pp. 300-301; ETUC, *cit.*, pp. 20-21.

[55] De Spiegelaere, Piasna, *cit.*, pp. 32-35; ETUC, *cit.*, pp. 21-23.

At the structural level, the effects of a four-day working week vary considerably according to workers' individual circumstances, sectoral characteristics and the broader regulatory environment. Worker uptake of the arrangement and individual outcomes are heavily conditioned by heterogeneous personal and caregiving commitments, specific job roles, pre-existing shift patterns and commuting frequency and duration[56]. Sectoral characteristics are equally decisive: the 4DW may prove especially beneficial in highly stressful sectors or in occupations characterised by high turnover, where improved working conditions could enhance retention and overall performance[57]. Conversely, factors such as seasonality, the structure of production chains involving interdependent departments, and the maintenance of international or global business relations with clients and stakeholders require tailored solutions and deep financial evaluations[58]. Finally, institutional and national frameworks significantly shape the implementation of the four-day working week. Financial incentives – such as the availability of public subsidies – are closely intertwined with the legal architecture governing working time: the choice of the appropriate regulatory instrument, whether statutory legislation or collective bargaining, thereby represents a pivotal element[59]. Moreover, this regulatory dynamic is linked to and influenced by both national collective bargaining coverage and the country's prevailing work culture[60].

At the organisational level, the effective adoption of the four-day week relies on the internal capacity of companies to redesign work in ways that make shorter working weeks sustainable. Introducing this measure requires a comprehensive reorganisation of workloads, alongside coherent wage policies and robust negotiation processes involving all relevant parties. This holistic approach is critical to prevent the 4DW from being reduced to a mere vehicle for cost-cutting or performance intensification, without a real commitment to enhancing workers' well-being[61].

[56] Eurofound, *Working anytime, anywhere*, cit., pp. 25-26; Du Bois, Baert, Sterkens, Derous, *From Policy to Practice: Unraveling Individual Uptake of Compressed Work Schedules*, in *HRMJ*, 2025, 64, pp. 1229-1230.

[57] Eurofound, *Working time reduction*, cit., pp. 9-10 and 62-63.

[58] Jain, Chouliara, Blake, *cit.*, pp. 5-8.

[59] Del Frate, *Studio sulla flessibilità*, cit., pp. 148-153.

[60] On the role of collective bargaining in the regulation of working time, see ETUC, *cit.*

[61] ETUC, *cit.*, pp. 12-13. This concern is particularly salient in the case of compressed working weeks. On the topic, see Du Bois, Baert, Sterkens, Derous, *cit.*, pp. 1237-1240.

Finally, at the cultural level, the long-term effectiveness of the four-day week depends on dismantling deeply entrenched workplace norms, particularly those linked to presenteeism and long-hours commitment models[62]. Without a genuine shift in managerial culture and evaluation metrics, shorter working hours risk reproducing informal career penalties and marginalising workers who use them.

Against this background, the potential contribution of the four-day working week to gender equality, which constitutes the primary focus of the present analysis, requires separate consideration. In this respect, the literature has identified several interrelated mechanisms through which this instrument may support more equal labour-market outcomes and a fairer distribution of care responsibilities.

A first mechanism concerns women's participation in the labour market. By improving work-life balance, enhancing predictability and programmability of working time, and making full-time employment more attractive, the four-day working week may encourage women's participation in paid work[63]. Given the high incidence of female part-time employment and the associated gender pay gap, the 4DW may also facilitate transitions from part-time to full-time employment, thereby contributing to narrowing both pay disparities and career inequalities[64]. Furthermore, since many of the most remunerative and senior positions currently presuppose long and uninterrupted working hours, a shorter standard working week may remove this barrier, opening access to leadership roles previously perceived as incompatible with family responsibilities[65]. A second mechanism relates to the redistribution of unpaid care work. The uptake of the four-day week by male workers may encourage a more balanced sharing of caring duties within households, while also challenging the stigma traditionally attached to reduced or flexible working arrangements when used for family-related reasons[66]. This shift is reinforced by a broader erosion of the "ideal worker"

[62] Eurofound, *Working anytime, anywhere*, cit., pp. 9-12. Chung, *Flexible working arrangements*, cit., pp. 79-81.

[63] Chung, *Flexible working arrangements*, cit., pp. 76-78; De Spiegelaere, Piasna, *cit.*, pp. 27-31; ETUC, *cit.*, pp. 23-24.

[64] Aa.Vv., *Work Time Reduction*, cit., pp. 341-343.

[65] Chung, *Flexible working arrangements*, cit., pp. 79-81; Chung, *A social policy case for a Four-Day Week*, in *JSP*, 2022, 51, 3, p. 557.

[66] By collectively reducing working hours for all employees, this mechanism also removes the social "excuses" that have historically allowed men to opt out of domestic and care

norm: by moving the measure of commitment away from presenteeism and towards tangible outcomes, the four-day week helps normalise the fact that every worker – regardless of gender – holds responsibilities beyond the workplace, thereby dismantling a stigma that has historically and disproportionately affected women[67]. Finally, these changes may generate broader economic effects at household level, including higher family income resulting from increased female labour market participation and a greater capacity to organise and access childcare services. Furthermore, by remaining within full-time employment regimes, women can also better protect their pension entitlements and long-term wage growth, in this way addressing the gender pension gap at its root.

Despite its potential benefits, the four-day week also entails significant risks and limitations for gender equality. Introduced in isolation and on a purely voluntary or corporate-led basis, it is unlikely to reverse structural inequalities in unpaid care or to foster gender equality in the labour market. Working-time reduction is part of a broader cultural transformation – much like gender equality itself – which relies on the coordinated action of multiple institutional actors. When individual companies take the lead in implementing such arrangements without State coordination, governments may be less inclined to intervene, both in terms of working-time regulation and for the promotion of equality policies[68]. A further concern arises from the operational design of the model, especially regarding the distinction between a "reduced" and a "compressed" four-day week. Concentrating standard weekly hours into four extended working days, as in the case of the "compressed" model, often proves incompatible with children's schedules and caregiving routines. If the model is imposed as a general organisational measure, it could potentially amount to indirect discrimination against workers with primary care responsibilities, who

activities. See: Mullens, *Time for a feminist future? A study on the impact of a 30-hour workweek on women's lives*, PhD dissertation, Vrije Universiteit Brussel, 2023, p. 225; Chung, *A social policy case*, cit., pp. 557-559.

[67] See Chung, *Flexible working arrangements*, cit., pp. 79-81, 92; Chung, *A social policy case*, cit., pp. 557-559; De Spiegelaere, Piasna, *cit.*, p. 65; Mullens, Glorieux, *Reducing weekly working hours: Temporal strategies and changes in the organization and experiences of work-Results from a qualitative study of a 30-hour workweek experiment*, in *TS*, 2023, 32, 2, pp. 162-163.

[68] Chung, *Flexible working arrangements*, cit., pp. 48-53.

are still predominantly women[69]. From a socio-cultural perspective, the four-day week may also reinforce rather than dismantle traditional gender roles. As a matter of fact, additional free time for women is often absorbed by unpaid domestic and care work, thereby reinforcing women's role as primary caregivers. Moreover, if the measure is adopted individually or voluntarily – resembling contemporary part-time models – it may attract a strong flexibility stigma, especially when associated with care or maternity. This can generate informal career penalties, slower wage growth and reduced access to promotion, ultimately contributing to a two-speed gender-segregated labour market[70] in which high-level positions remain tied to a long-hours culture.

4. *The Italian case: gender inequalities and four-day working week experiments*

Both models of the four-day working week described have gained traction in several Member States through legislative initiatives and collective agreements. An increasing number of experiments is also observable in Italy. Consistent with the aim of this study – to assess whether working-time reorganisation, conceived through a flexible and gender-aware lens, can serve as a driver of female inclusion rather than a source of further marginalisation – this section and the following one examine the Italian context and the conditions under which the 4DW might promote substantive gender equality.

First and foremost, the examination of certain data concerning the current condition of the Italian labour market – from a gender perspective – helps to understand and highlight the need to introduce innovative labour market organisation measures capable of improving some of the critical indicators that remain still present[71].

[69] Du Bois, Baert, Sterkens, Derous, *cit.*, p. 1237; Del Frate, *Studio sulla flessibilità*, cit., p. 150; De Spiegelaere, Piasna, *cit.*, p. 50.

[70] Chung, *Flexible working arrangements*, cit., p. 80, uses the concept "*two-tiered labour market system*" talking about the obstacles against career and remuneration prospects. Also, Chung, *A social policy case*, cit., p. 556.

[71] Data are taken from: Esposito (ed.), *Rapporto annuale sul mercato del lavoro e politiche di genere (Gender Policy Report)*, INAPP, December 2025. For an overview of EU data and trends, refer to the study by Aa.Vv., *The future of gender*, cit., pp. 18-38.

In 2025, the employment rate of the female population remains lower than that of the male population (53.9% compared with 71.4%), while concerning the unemployment rate of individuals, the gap is more limited, though still worrying (7.4% for women and 6.2% for men). By contrast, the disparity is far more pronounced in relation to the inactivity rate, which stands at approximately 41.7% for women, almost double that recorded for men (23.9%)[72]. Compared with 2024, a slight increase in women's employment rates can be observed: however, this growth is concentrated in the 45-64 age group; instead, for men, together with a similar rise in employment rates among those aged over 55, an increase in employment is also evident in the 25-34 age group[73].

A factor that significantly affects labour market participation indicators is parental status. According to data for 2025, having a child of dependent age produces markedly different effects on the labour market position of men and women: the employment rate for men remains on average 30% higher than that for women. Particularly alarming figures emerge with regard to maternal unemployment – which tends to be approximately double that of fathers – as well as non-participation in the labour market, which again is roughly twice as high for women as for men. An additional cause for concern is that these figures do not improve substantially as the age of dependent children increases, thereby highlighting the long-term effects of motherhood on women's employment prospects and career opportunities[74].

An analysis of the data concerning the underlying reasons for non-participation in the labour market indicates that "education and vocational training" constitutes the principal reason among economically inactive men aged 25-34 (45.5%). For women, by contrast, the predominant reason is "family-related responsibilities", accounting for 43.9% in the same age group. This proportion increases further among those aged 35-44 (61.5% for women compared with 4.6% for men) and remains consistently higher than that recorded for male workers across all subsequent working-age groups[75]. Finally, with regard to the contractual arrangements characterising newly employed individuals, the proportion of part-time contracts among women

[72] Esposito (ed.), *cit.*, p. 10.
[73] Esposito (ed.), *cit.*, p. 16.
[74] Esposito (ed.), *cit.*, pp. 11-12.
[75] Esposito (ed.), *cit.*, pp. 19-20.

stands out: 48.7% of newly employed women are engaged on a part-time basis, compared with 27.5% of newly employed men[76].

The aforementioned data depict female employment in Italy as still facing significant challenges, structurally linked to deep-rooted critical issues relating to a work culture characterised by prolonged working hours and a persistently patriarchal allocation of care responsibilities within households. This situation continues to be reinforced by the inadequacy of regulatory instruments designed to counteract such tendencies. Alongside a comparatively generous period of maternity leave of five months, there exists a paternity leave entitlement of negligible duration[77] – ten days, corresponding to the minimum required under the WLB directive – and parental leave which, although generous in terms of its overall duration available to families (ten months, extendable to eleven), remains negatively affected by its limited financial coverage[78]. Similarly, Legislative Decree No. 105/2022, implementing the WLB directive, merely grants priority access to smart working for working parents (with children up to 12 years of age or disabled children), workers with disabilities and workers with caregiving responsibilities towards dependent family members requiring assistance. Yet, because the employer retains the final decision, this priority falls short of creating a genuine right to flexible working[79].

Within this context, the implementation of novel working-time flexibility measures – such as the four-day working week – assumes a potentially transformative significance, challenging both traditional organisational structures and entrenched cultural norms[80]. In Italy, this evolution has been driven primarily by innovative company-level collective agreements, alongside legislative reform proposals aimed at reshaping national working-time regulation.

[76] Esposito (ed.), *cit.*, pp. 21-22.

[77] Draft law no. 2228/2025, introducing equal parental leave for fathers, was rejected on 27 February 2026.

[78] While compensation may reach up to 80% of salary for three months, it is reduced to 30% of remuneration for the remaining period.

[79] See Dagnino, *Sull'attuazione della Direttiva UE 2019/1158: il nodo del "lavoro flessibile"*, in *LG*, 2023, 2, p. 140 ff.

[80] Chung, *Flexible working arrangements*, cit.

4.1. *Legislative initiatives and corporate practices: evaluating short-week models through a gender lens*

This section reviews the main legislative proposals and collective bargaining practices concerning the four-day working week in Italy, with a view to assessing their potential and limitations from a gender equality perspective.

Between 2022 and 2024, four legislative proposals on working-time reduction were introduced in Parliament, namely no. 142/2022, no. 1000/2023, no. 1505/2023[81] and no. 2067/2024. Although none was ultimately approved – with the most recent one, a synthesis of earlier initiatives, being rejected in March 2026 – together they illustrate the gradual evolution of a regulatory debate around the four-day working week.

Regarding their scope of application, proposals no. 142/2022, 1000/2023 and 2067/2024 applied to both the public and private sectors, whereas proposal no. 1505/2023 targeted exclusively the private sector.

The regulatory design of working-time reduction also varies, even if only to a limited extent, across the four proposals. All of them envisaged the possibility of implementing the reduction through a four-day working week. However, they differ as regards the extent of the proposed reduction: proposal no. 142/2022 envisaged a reduction of standard weekly working time to up to 34 hours, while proposals no. 1000/2023 and 2067/2024 reduced it to up to 32 hours; by contrast, proposal no. 1505/2023 merely referred to a reduction in weekly working time without being more specific. Despite these differences, all four proposals share one essential feature, namely the maintenance of workers' previous remuneration. The proposals also differ with regard to the regulatory instrument governing the implementation of the new working-time regime. The first proposal relied primarily on statutory intervention, while the remaining proposals entrusted

[81] For a discussion on the first three proposals, see: Del Frate, *Studio sulla flessibilità*, cit., pp. 143-148; the articles in *Boll. Spec. Adapt*, 2024, 4, by: Alifano, Martini, Sala, Virgili, *La riduzione dell'orario di lavoro: le proposte di legge*; Marchiotti, Zanella, Zaniboni, *Oggetto, finalità e ambito di applicazione delle proposte di legge in materia di riduzione dell'orario di lavoro*; Biundo, Chirico, Prosdocimi, *Il ruolo della contrattazione collettiva nelle proposte di legge sulla riduzione dell'orario di lavoro*; Nardo, Sannipoli, *L'organizzazione del tempo di lavoro all'interno delle tre proposte di legge relative alla riduzione dell'orario di lavoro*; Altilio, Catalano, Guerra, Papini, *Incentivi e sanzioni per la riduzione dell'orario di lavoro: l'analisi delle proposte di legge*.

implementation to collective bargaining – at national level in no. 1000/2023 and at any bargaining level in no. 1505/2023 and no. 2067/2024. The latter proposal is particularly noteworthy because it combined the two regulatory approaches: it initially entrusted the implementation of working-time reduction to collective bargaining, subsequently providing that, once the period of application of the support measures had expired, the statutory standard working time laid down in art. 2 of Legislative Decree no. 66/2003 would be amended accordingly.

Institutional support, in the form of financial incentives and dedicated governance structures, occupies a central place across all four proposals, reflecting the awareness that a reduction in working time can only be sustainable if accompanied by appropriate economic and organisational support. To ensure the financial viability of working-time reduction while preserving workers' remuneration, the proposals provided for a range of measures. First, with the exception of proposal no. 1000/2023, all acts envisaged the use of specific funds: proposal no. 142/2022 provided for the establishment of a *Fondo di incentivazione alla riduzione dell'orario di lavoro* to support employers implementing a reduction in working time of at least 10%; proposals no. 1505/2023 and 2067/2024 identified the *Fondo Nuove Competenze* as the primary financial instrument. Secondly, all four proposals provided for social security contribution exemptions of varying scope for employers introducing reduced working-time schemes. Finally, proposals no. 1000/2023 and 2067/2024 envisaged the establishment of a "National Observatory on Working Time". Under the latter proposal, the Observatory – composed of experts in labour law and business organisation, as well as ministerial and trade union representatives – would be responsible for monitoring the effects of collective agreements reducing working hours, assessing the effectiveness of training schemes and for reviewing investments in new technologies.

The gender dimension receives uneven attention across the four proposals. Work-life balance and the reconciliation of "individual and family time with social time, working time, training, cultural activities and service provision", within a broader commitment to economic, environmental and social sustainability, were identified among the objectives of proposals no. 142/2022, no. 1000/2023 and no. 2067/2024. By contrast, proposal no. 1505/2023 contained no explicit reference to gender equality or to the promotion of women's employment. The rationale underpinning the re-

lationship between working time and gender equality is expressed clearly in proposals no. 1000/2023 and 2067/2024: the current organisation of working time is one of the structural factors contributing to the gender pay gap[82], since women are more likely to reduce or interrupt their participation in paid employment to take care of family responsibilities. This dynamic is particularly significant in a labour market where remuneration remains closely linked to working time, thereby reinforcing the traditional allocation of unpaid care work within households, according to which the lower earner – typically the woman – is more likely to withdraw from the labour market. Against this background, proposal no. 2067/2024 expressly provided that the reduction in working time might not be compensated through an increase in overtime, thereby seeking to preserve the intended effects of the measure. As a whole, although gender equality constituted one of the principal justifications advanced in support of working-time reduction, none of the proposals systematically incorporated a gender perspective into the design of the measure. Rather than shaping its regulatory architecture, gender equality primarily operated as a policy objective underpinning the reform.

Having examined the legislative proposals put forward regarding the reduction of working hours, the focus now turns to analysing how certain companies have implemented the four-day working week through company-level collective agreements. The aim is to map the main models and technical solutions in corporate practice. This analysis serves as a basis for assessing, in the concluding section, under which implementation conditions the 4DW can effectively promote gender equality.

First, attention must be devoted to the rationale underlying the adoption of the 4DW. Where the measure has been introduced with the explicit aim of facilitating the reconciliation of personal and professional life, employees' well-being is more likely to become an explicit organisational objective and to be structurally embedded into work organisation. This is the case with the four-day working weeks introduced at Leonardo S.p.A.[83] – where individual well-being and the harmonisation of working and

[82] The reference made in the proposal is to the work of Goldin, *Career and family: women's century-long journey toward equity*, Princeton University Press, 2021.

[83] Arts. 17.1-17.6 of the agreement, signed on 20 December 2023, https://fiomcgil-taranto.it/wp-content/uploads/2024/01/2023.12.20-Verbale-di-Accordo-per-il-rinnovo-del-Contratto-Integrativo-Aziendale-Leonardo.pdf.

non-working time are central considerations – as well as at Lavazza[84], Intesa Sanpaolo[85], Fastweb[86], and Luxottica[87], where corporate welfare measures and work-life balance policies are conceived as strategic responses to contemporary cultural and social transformations.

Another critical issue concerns the technical and practical modalities through which the four-day week is adopted within corporate environments. In this respect, a primary structural distinction can be drawn between companies applying the 4DW universally across their entire workforce and those designing the policy for specific groups of workers or operational units. Most company-level agreements favour a universal scope of application, sometimes managing the adoption through department-specific schedules. For instance, differentiated short-week schemes have been introduced across various departments at Lamborghini[88], whereas at Leonardo S.p.A. the measure has been experimented within operational units whose activities cannot be performed remotely. In other cases, such as Luxottica, implementation is conditional upon the participation of all staff within the same operational area to ensure less complex and more effective organisation of work. A further technical variation relates to whether the scheme is mandatory or voluntary. The former model is exemplified by Lavazza – which enforces a collective closure on Fridays – and Lamborghini, which has restructured the ordinary collective working schedule. The voluntary

[84] On the agreement, signed on 23 November 2022, see Aa.Vv., *Analisi e formulazione*, cit., pp. 19-20 and Valente, *Per una storia della contrattazione collettiva in Italia/150 - Il contratto integrativo Lavazza, tra formazione ed eguaglianza*, in *Boll. Adapt*, 2023, 9.

[85] On the agreement, signed on 26 May 2023: Porcheddu, *Smart working e 'settimana corta' in Intesa Sanpaolo: un esempio di 'transizione digitale' negoziata*, in *DRI*, 2023, 3, pp. 852 ff.

[86] The agreement was signed on 26 July 2023, https://www.fistelcisl.it/wp-content/plugins/pdf-poster/pdfjs/web/viewer.html?file=https://www.fistelcisl.it/wp-content/uploads/2023/07/20230726FASTWEB_FastwebAir_accordointegrativo-3.pdf&download=true&print=true&openfile=false, pp. 4-6.

[87] On the agreement, signed on 30 November 2023, see Sacconi, *Il mio canto libero – Accordo Luxottica frutto di un complesso scambio aziendale tra produttività e orario*, in *Boll. Adapt*, 2023, 42; Alifano, Porcheddu, *Per una storia della contrattazione collettiva in Italia/188 - L'accordo Luxottica: un presidio di territorio oltre la "settimana corta"*, in *Boll. Adapt*, 2024, 6; Aa.Vv., *Analisi e formulazione*, cit., pp. 26-27.

[88] On the agreement, signed on 5 December 2023, Zaniboni, *Per una storia della contrattazione collettiva in Italia/181 – Flessibilità e conciliazione vita-lavoro: le parole d'ordine dell'Ipotesi di Contratto integrativo aziendale di Automobili Lamborghini*, in *Boll. Adapt*, 2023, 44.

model, by contrast, is favoured by Intesa Sanpaolo, which leaves workers free to opt for the instrument.

A third structural dimension emerges in companies where work-life balance constitutes a primary objective of the 4DW. In these contexts, the reduction of working time is rarely implemented as an isolated measure; rather, it forms part of a broader framework encompassing targeted instruments in support of parenthood and employee well-being. For example, in the most recent renewal of its company-level collective agreement concluded in December 2025[89], Intesa Sanpaolo expressly undertook the short working week as a dedicated tool for supporting working parents. In particular, the company guarantees a "very short week" (*settimana cortissima*) consisting of 7.5 daily hours over four days (for a total of 30 hours per week, distinct from the standard 9x4 model used elsewhere in the group), for parents with children up to three years of age, while ensuring full pay. Similarly, Leonardo S.p.A. has coupled working-time reduction with broader corporate welfare initiatives, including nurseries[90] and birth bonuses.

Corporate practices reveal a further trend: the implementation of the four-day week as part of a broader set of spatial and temporal flexibility measures. A prominent example is the provision of remote working arrangements alongside the four-day week, as established in company-level agreements of Lamborghini, Sace S.p.A.[91], SIAE[92], Lavazza, Intesa Sanpaolo and Fastweb. Further noteworthy practices include the use of working-time accounts (*banca delle ore*) – as provided for at Lamborghini, Lavazza and Intesa Sanpaolo – as well as flexitime arrangements in entry and exit from work, also introduced at Lavazza and Intesa Sanpaolo.

[89] The agreement was signed on 24 December 2025. Very interesting is the *Accordo Genitorialità ("*Parenthood Agreement*")*, available at https://www.falcri-is.com/wp-content/uploads/2025/12/20251224_Accordo-Genitorialita-DEF.pdf, 4*b*.

[90] An agreement has been recently signed between 2A, Engineering, Eni, FiberCop, Fincantieri, Intesa Sanpaolo, ITA Airways, Leonardo, and Open Fiber to establish the "*Cresciamo il futuro"* Foundation, with the aim of creating an extensive national network of nurseries accessible to all employees of the participating companies. See https://www.leonardo.com/it/press-release-detail/-/detail/22-10-2025-nasce-la-fondazione-cresciamo-il-futuro.

[91] The agreement, signed on 20 December 2023, is available at the following link: https://www.sace.it/docs/default-source/le-nostre-persone/vivere-in-sace/contratto-integrativo-aziendale-sace-spa.pdf?sfvrsn=40771bb9_1.

[92] On the agreement, signed on 15 December 2023, Altilio, *Per una storia della contrattazione collettiva in Italia/203 - CCNL Siae: misure sperimentali e innovative per il personale non dirigente*, in *Boll. Adapt*, 2024, 17.

Finally, a crucial criterion emerging from the Italian four-day working week experiences concerns the participatory governance mechanisms surrounding the introduction of flexibility measures. Employee and trade union involvement in the design and negotiation of the 4DW has played a central role at Lamborghini, Lavazza and Luxottica. These participatory governance mechanisms appear particularly valuable when complemented by systematic post-implementation monitoring: positive examples include Lamborghini – where monitoring is conducted by a joint working group (*Gruppo di lavoro paritetico)* – as well as Luxottica[93], which provides for quarterly monitoring activities. The active involvement of workers and trade union representatives increases the likelihood that new working-time arrangements reflect employees' actual needs while remaining compatible with organisational requirements.

5. *Concluding remarks: towards a gender-responsive four-day working week*

The article moved from the premise that female occupational segregation remains a persistent structural challenge within European labour markets. In this context, the traditional organisation of working time has historically acted as a key determinant in shaping the employment gender gap, often producing discriminatory effects against women due to the difficulty of reconciling paid work with family and caregiving responsibilities. However, recent legal and organisational evolutions have contributed to a revision of working time's role: organised through the lens of flexibility, it has transitioned from a mechanism of marginalisation into a strategic tool for women's inclusion and the promotion of substantive equality. Building on this theoretical framework, the research has connected the analysis of working-time flexibility to its most recent and innovative manifestation, namely the four-day working week. Indeed, the same factors influencing the successful implementation of corporate flexibility and gender-equality measures – such as sector, company size, union representation and organisational culture – have proved to be particularly significant also in the adop-

[93] At Luxottica, different Committees are involved in the proposition and evaluation of new working models, such as the *Commissione Pari Opportunità* and the *Commissione Organizzazione e orario di lavoro*.

tion of the four-day working week. The focus on the Italian case study has contextualised the spread of this innovative instrument within an employment landscape that still faces structural gender gaps: key indicators include lower female employment, high inactivity rates, the long-term impact on parenthood on women's career and their heavy reliance on part-time.

In this context, shorter working weeks could potentially address many of these critical issues. However, for the potential benefits to become concrete, the present analysis identifies the conditions under which the four-day week can effectively foster gender equality. Such conditions emerge from a cross-analysis of the legislative proposals advanced on the topic and the first experiences of company-level collective bargaining, considered alongside the factors previously examined with regard to the introduction of flexibility measures aimed at gender equality.

Before focusing on these conditions, it seems necessary to clarify which model of the four-day week is considered potentially valuable for promoting gender equality. In the light of the research carried out, the "compressed" week appears to be an unsuitable model for these purposes, particularly when considered within the context of the Italian labour market. More specifically, there is a significant risk of perpetuating and exacerbating existing inequalities in the distribution of family and care responsibilities: restructuring the standard working week into four days risks extending – rather than combat – the culture of long working hours, which is one of the primary causes of women's occupational segregation. Furthermore, from this point of view, the adoption of a compressed working week would require – even more so than a "reduced" four-day week – an institutional framework and services to support families and care which still appear inadequate at national level.

Having clarified this point, let us now turn to identifying the conditions under which "reduced" four-day weeks can become effective tools for gender equality.

First, the organisational design of the measure is crucial. The identification of a clear rationale behind the measure aimed at promoting work-life balance and gender equality is essential to counter the risk that it might be implemented solely for branding purposes, inducing somehow companies to provide effective responses also in these terms. The scope of application of the measure is likewise quite relevant: a universal approach prevents both the *a priori* exclusion of potential beneficiaries and the targeting of specif-

ic categories of workers (such as parents or caregivers). By avoiding measures restricted to these groups – which could otherwise cause new forms of marginalisation – universal application promotes the widespread diffusion of the scheme and helps prevent the gender stereotyping often associated with flexible arrangements. Similarly, the voluntary basis of the scheme may prove to be a double-edged sword: on the one hand, it risks increasing the gender gap if the measure is primarily adopted by women, leaving intact the effort of men in care and family responsibilities; on the other hand, it would allow workers to choose the instrument best suited to their needs, particularly where other forms of organisational flexibility are available, at the same time avoiding the risk of discriminating someone through its general imposition. These implementation modalities also lead to two broader recommendations. Regular monitoring should be carried out not only after the adoption of the measure – to evaluate its efficacy and prevent potential gendered use of the four-day week – but also during the initial design phase. This earlier stage allows for a reasoned and tailored planning that accounts for the specific needs of different departments and workers. Furthermore, a universal scope of application of the 4DW should be favoured, although targeted measures may occasionally be necessary to guarantee a minimum standard of success in specific sectors or departments, in line with the logic of positive actions and based on their starting points in terms of gender equality.

Second, embedding the four-day week within a broader set of measures aimed at gender equality and work-life balance is fundamental to ensuring a redistribution of care responsibilities between men and women. This trend is already observable in ongoing four-day week initiatives that seek to provide tools capable of filling the gaps left by statutory provisions, for instance by improving leave schemes and paid time off, as well as introducing various welfare benefits. In these terms, the four-day working week serves as a valuable tool for labour market inclusion not only for women but also for workers disadvantaged by other factors of discrimination, such as disability or age. Accordingly, the design and implementation of four-day working week schemes should be supported by highly trained Diversity, Equity and Inclusion (DE&I) professionals.

Similarly, the four-day week should not be introduced in isolation from other flexibility measures available in the workplace. This approach enhances its capacity to promote gender equality, as it enables individual family units to select the most suitable arrangements for their specific needs.

Finally, the involvement of workers and trade union representatives in designing and adopting a four-day working week, as observed in ongoing corporate experiences, appears essential to the success of the initiative also from a gender equality perspective. Actively shaping work arrangements around the diverse needs of employees transforms flexibility from a structural risk that may discriminate against certain categories into a tool for inclusion and well-being. Ultimately, this drives the deeper transformation of organisational culture required both to reduce working time and to promote gender equality.

Having identified the conditions under which the four-day week can effectively promote gender equality, the final issue addressed is the determination of which regulatory approach is best suited to achieve this objective. The answer cannot be reduced to a single regulatory instrument, given the multifaceted nature of the intervention required to ensure gender equality in the Italian – as well as European – employment context.

The role of collective bargaining appears to be fundamental on two fronts[94]. At national level, collective bargaining can establish minimum standards concerning the organisation of working time and gender equality measures, taking into account the specific characteristics of the relevant productive sector. At company level, collective agreements can promote highly innovative models (both in terms of working-time arrangements and gender equality policies) through investment in tailor-made initiatives based on the characteristics and needs of specific workforces. However, an approach relying solely on collective bargaining risks producing fragmented outcomes and reinforcing a multi-speed labour market. Legislative intervention is therefore equally essential, particularly in light of the need for structural reforms aimed at ensuring that gender equality becomes a reality in the labour market. These should include measures concerning, for instance, leave schemes and childcare and care infrastructures, alongside the broader need to restructure organisational models that remain grounded in a culture of long and highly bureaucratised working hours. Addressing these issues requires a comprehensive reconsideration of matters such as technological investment, wage levels and training.

From this perspective, the most appropriate regulatory strategy would be to rely on collective bargaining for the introduction and adaptation of

[94] As emphasised also by ETUC, *cit.*, p. 76.

four-day working week schemes, while legislative intervention should subsequently provide the structural reforms necessary to transform the organisation of working time more broadly. Such reforms are crucial given that the current organisation of working time continues to constitute a structural and cultural source of discrimination, with a substantial impact on the achievement of gender equality.

Abstract

The essay investigates the evolution of EU working-time regulation from a work-life balance tool into a strategic governance mechanism for substantive gender equality. Using Directive 2019/1158/EU, especially art. 9 on flexible working arrangements, as a starting point, the study explores the gendered implications of working-time flexibility and reduction, with particular attention to the innovative model of the four-day working week. Drawing on the Italian case, it examines recent legislative proposals and company-level collective agreements to identify the optimal conditions for inclusive organisational change and to avoid new forms of marginalisation.

Keywords

Working-time reduction, Four-day working week, Gender equality, Work-life balance, Italian labour law.

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Work-Life Balance and Anti-Discrimination Law: Sex, Disability, and the Multilevel Intersection of Reconciliation Rights*

Contents: 1. Introduction. 2. EU policies and legal framework on work-life balance: evolution. 3. The intersection between work-life balance and anti-discrimination law. 3.1. General approach. 3.2. Developments at the level of EU Law. 3.2.1. Reconciliation and discrimination on sex grounds. 3.2.2. A different perspective – reconciliation and discrimination on disability grounds: from *Coleman* to *Bervidi*. 3.2.2.1. The case – relevant facts and the Court's decision. 3.2.2.2. Observations on the Judgment. 3.2.2.2.1. The prior *acquis*: the obligation of reasonable accommodation; the concept of discrimination by association. 3.2.2.2.2. The apport of the Judgment. 3.3. Developments at national level. 3.3.1. The Portuguese case. 3.3.2. The Spanish case. 3.3.3. The Italian case. 4. Work-life balance rights: towards an autonomous protected characteristic?

1. *Introduction*

The legal architecture of work-life balance within the European Union (EU) has undergone a profound structural transformation over the last three decades. Originally conceived as a narrow set of protections confined to the biological condition of maternity, reconciliation policies have gradually moved beyond their initial clinical focus towards a sophisticated framework designed to foster a more equitable distribution of caregiving respon-

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sibilities between men and women. Within this context, Directive (EU) 2019/1158 of the European Parliament and of the Council, of 20 June 2019, on work-life balance for parents and carers, represents a pivotal moment, formally decoupling reconciliation rights from their historical gendered foundations and reconfiguring them as essential instruments for achieving substantive equality in the modern labour market. However, this legislative progress raises a complex legal question: whether the exercise of these rights should now be established as an autonomous ground of discrimination, independent of the sex factor.

The article begins by providing an account of the evolution of policy instruments and legislative measures regarding work-life balance within the framework of EU law. It scrutinises the transition from *first-generation* measures – centred on female biological protection – to the contemporary *second-generation* instruments that emphasise co-responsibility and the individualisation of rights.

The subsequent part focuses on the intersection between work-life balance and anti-discrimination law, exploring the different dimensions on which these two topics interface. In particular, it analyzes a set of judgements of the Court of Justice (of the European Union) (CJEU), which suggest either framing discrimination related to conciliation rights as a form of indirect discrimination based on sex, and comprehending it as discrimination on grounds of disability – given, of course, a disabled person is at stake.

Further, the text provides a comparative legal study of the Portuguese, Spanish and Italian domestic systems, an approach that elucidates the varied legislative and judicial responses to the increasing demand for enhanced protection for working parents and carers.

Finally, drawing upon these empirical and theoretical foundations, the article contends that the recognition of the exercise of reconciliation rights as an autonomous ground of discrimination is warranted, based upon a three-fold argumentative framework.

2. *EU policies and legal framework on work-life balance: evolution*

Over the last three decades, the EU has developed an increasingly complex framework of policy instruments and legislative measures regarding work-life balance. This evolution has been marked by significant shifts

in its objectives, target beneficiaries, and the specific instruments designed to promote such reconciliation[1].

In an initial stage, work-life balance policies – termed "first-generation reconciliation policies"[2] – were centred exclusively on women. Recognizing that caregiving responsibilities, traditionally borne by women, could hinder their ability to prepare for, enter, or participate in the labour market, reconciliation measures emerged. These aimed to ensure that their entry into the labour market and subsequent professional activity did not pose risks to their health and safety (as well as that of the embryo, fetus, or newborn) during pregnancy, the postpartum period, and breastfeeding. Furthermore, these measures sought to ensure that the exercise of reconciliation rights did not negatively impact the stability of the employment relationship. It was within this context that the EU adopted 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. This Directive granted workers at least 14 weeks of maternity leave, the right to paid time off for antenatal examinations held during working hours, and prohibited the dismissal of workers during these periods, acknowledging that the risk of dismissal for reasons related to their condition could have detrimental effects on their physical and mental state.

However, recognizing that the disproportionate burden of caregiving responsibilities constitutes a fundamental barrier to women's meaningful participation in the labour market under equitable conditions, reconciliation policies since the mid-1990s have pivoted towards a systemic transformation of this paradigm. These policies sought to discourage women from

[1] For a general approach on this evolution, see Chieregato, *A work-life balance for all' Assessing the inclusiveness of EU Directive 2019/1158*, in *The International Journal of Comparative Law and Industrial Relations*, Wolters Kluver, 36, 1, 2020, pp. 59-80; Ramalho, *Conciliação equilibrada entre a vida profissional e familiar - uma condição para a igualdade entre mulheres e homens na União Europeia*, in *Estudos de Direito do Trabalho*, 1, Coimbra, Almedina, 2003, pp. 271-272; Gorelli Hernández, *Un análisis normativo de la evolución de las políticas de conciliación en la unión europea. De la maternidad a la corresponsabilidad*, in *Femeris*, 7, 2, 2022, pp. 10-43; and Vicente/ Gonçalves, *O exercício de direitos de conciliação como (potencial) factor de discriminação*, *Comemoração dos 50 anos da Constituição da República Portuguesa*, 1, Faculdade de Direito da Universidade de Coimbra, Coimbra, 2026, pp. 635-687.

[2] In accordance with Fernández Prieto's terminology, *Conciliación de responsabilidades de progenitores y cuidadores e igualdad de oportunidades en la Directiva (UE) 2019/1158*, in *RDSE*, 12, 2020, pp. 94-121.

assuming these responsibilities exclusively or predominantly or, in other words, to encourage men to participate in such tasks. To maternity-reconciliation policies were added those focused on parental-reconciliation, whose beneficiaries were no longer solely women, but parents of both sexes. Concurrently, there was a broadening of the means through which reconciliation could be achieved, encompassing mechanisms for flexible work organisation, allowing for an articulation that does not entail withdrawal from professional activity. The EU adopted two instruments in the field of reconciliation. Firstly, Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC, which provided for the granting of parental leave – distinct from maternity leave – as well as the right to time off from work on grounds of *force majeure* for urgent family reasons, focusing on the reconciliation of professional and family responsibilities for workers with children. Consequently, reconciliation rights emerged that are held by parents, whether male or female. Explicitly recognising the importance of measures designed to facilitate access to part-time work for both men and women to reconcile professional and family life, Directive 97/81/EC, of 15 December, concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC, prohibits discrimination between part-time and full-time workers. It also recommends that employers consider workers' requests to transfer from full-time to part-time work (and vice versa).

Furthermore, from the perspective of integrating working fathers into European reconciliation policies and fostering shared parental responsibility, Directive (EU) 2006/54/EC of the European Parliament and of the Council, of 5 July, on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation is particularly noteworthy. This Directive extended protection against dismissal – previously reserved for mothers – to fathers eligible for paternity leave. This shift represents a further manifestation of the integration of fathers within European reconciliation frameworks, aligning with established strategic guidelines and the recommendations addressed to Member States to encourage shared parental responsibility. Similarly, Directive 2010/18/EU, of 8 March, implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC, pursues the dual objective of enhancing the reconciliation of professional, private, and family life for working parents, while simultaneously promoting

equal opportunities between men and women. In addition to extending the duration of parental leave for each parent to a minimum of four months, the Directive introduces a mandatory non-transferable period of at least one month. Moreover, it establishes provisions allowing workers returning from parental leave to request changes to their working hours and/or patterns for a determined period.

More recently, the work-life balance agenda has gained renewed momentum. Coupled with the proclamation of the European Pillar of Social Rights, Directive (EU) 2019/1158 of the European Parliament and of the Council, of 20 June, on work-life balance for parents and carers, reinforces mechanisms for the balanced sharing of family responsibilities between men and women. This aims, on one hand, to promote women's participation in the labour market and, on the other, to advance a novel perspective on reconciliation[3]. Within the primary objective, it introduces the long-awaited right to paternity leave and extends the minimum period of non-transferable parental leave from one to two months. Concurrently, a reconciliation policy is implemented that incorporates a new work-care model, severing the inexorable link between reconciliation and parenthood. Caregiving situations are no longer exclusively focused on parental childcare but extend to the complex and continuous care relationships that workers encounter throughout their lives – caring for dependents with disabilities or chronic illnesses, the elderly, and end-of-life care patients. This expansion is particularly acute in the introduction of the *carer* category, which is granted specific rights, such as carer's leave. Finally, it provides workers with enhanced opportunities and options to balance professional and caregiving responsibilities. This new reconciliation perspective encompasses the idea of parents and carers remaining active in the workforce by fostering access to flexible working arrangements, such as telework, flexible working hours, or reduced working hours.

[3] See Oliveira, De la Corte-Rodríguez, Lütz, *The New Directive on Work-Life Balance: Towards a New Paradigm of Family Care and Equality?,* in *ELR*, 3, 2020, pp. 295-323. For a more comprehensive analysis of the Directive, see Chieregato, "A work-life balance for all?", *cit.*, p. 8; Weldon-Johns, *EU work-family policies revisited: finally challenging caring roles?*, in *ELLJ*, 12/3, 2020, pp. 301-321; Cristóbal Roncero, *La conciliación de la vida familiar y profesional en la Unión Europea*, in *REJLSS,* 8, 2024, pp. 73-97; and Fernández Prieto, *Conciliación de responsabilidades de progenitores*, *cit.*

3. *The intersection between work-life balance and anti-discrimination law*

3.1. *General approach*

The intersection between work-life balance and anti-discrimination law represents a dilemma that has intensified, particularly given the evolution of reconciliation policies discussed in the previous section. This intersection has been both expanded and deepened by the jurisprudence of the CJEU as well as by legislative amendments and innovations within both EU secondary law and the domestic legal systems of Member States.

Initially, this connection was primarily established by questioning the compatibility of certain reconciliation measures – namely maternity leave and other child-related rights granted exclusively to mothers – with the principle of equal treatment, which prohibits any discrimination on grounds of sex. In a significant body of cases, the CJEU was tasked with determining the extent to which national legal solutions – those establishing differential treatment between female and male workers regarding certain reconciliation measures by failing to grant such rights to working fathers – violate the principle of equal treatment on grounds of sex, as enshrined in Directive 76/207/EEC of 27 November[4], 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[5]. Alternatively, the Court considered whether such measures are justified under Article 2(3) of the aforementioned Directive, which permits the protection of women concerning pregnancy and maternity, or under Article 2(4), which allows for measures designed to rectify factual inequalities to promote equal opportunities between men and women. While the CJEU initially endorsed a broad interpretation of the first exception – underpinned by a comprehensive and perhaps antiquated conception of the functions of maternity leave, thereby legitimising differential treatment between female and male workers (*Hofmann*[6]) –, the Court's jurisprudence has since undergone a significant shift.

[4] Dir. 76/207/EEC was repealed and replaced by dir. 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,

[5] De la Corte Rodriguez, *Maternity leave and discrimination against fathers: current case law of the Court of Justice of the European Union and the way forward*, in *ICJur*, 4, 1, 2018, pp. 27-41.

[6] C-184/83, 12 July 1984.

This evolution has trended both towards the recognition of equality between men and women in their roles as parents and a more restrictive interpretation of such exception (*Roca Álvarez*[7]; *Maistrellis v Ypourgos Dikaiosynis, Diafaneias kai Anthropinon Dikaiomaton*[8]; *Syndicat CFTC*[9]). Regarding the second exception, the CJEU has consistently aimed to distinguish between measures that grant rights exclusively to women which effectively serve to rectify *de facto* inequalities, and those which, by ultimately perpetuating gender stereotypes, produce the diametrically opposite effect[10].

In a second stage – and this is the central addressed here –, the intersection between reconciliation rights and anti-discrimination law has moved into a new perspective, or even a different level. The issue is whether any detriment or disadvantage suffered by those exercising reconciliation rights (be they men or women), compared to those who do not, should be regarded as a discriminatory practice. If so, we must identify which specific suspect category or criterion is at stake. As will be discussed in the following pages, linking the care of minors and family members to grounds of discrimination remains an open debate at both the EU and national levels, with no unanimous solution yet in sight. Furthermore, another question is open to debate, mainly after the *Bervidi* judgement[11]: is the mere omission of granting due conciliation rights a discriminatory act?

3.2. *Developments at the level of EU Law*

3.2.1. *Reconciliation and discrimination on sex grounds*

If we examine the jurisprudence of the CJEU, its judgements seem to establish a link between unfavourable treatment due to the exercise of reconciliation rights and sex discrimination, albeit only to a certain extent. The first case in which such connection was established was *Österreichis-*

[7] C-104/09, 30 September 2010. See Rubenstein, *Recent and Current Employment Discrimination Cases in the Court of Justice of the European Union*, in *EqLR*, 15, 2015, p. 57.

[8] C-222/14, 16 July 2015.

[9] C-463/19, 18 November 2020. Regarding this judgement, see De la Corte Rodriguez, *The first revision of the* Hofmann *case law on maternity leave and discrimination against fathers: caregiving as the pivot?*, *in ILJ*, 50, 2, 2021, pp. 306-323.

[10] *Lommers v. Minister van Landbouw*, C-476/99, 10 March 2002, and *Pedro Manuel Roca Álvarez v Sesa Start España ETT AS,* C-104/2009, 30 September 2010.

[11] C-38/24, 11 September 2025.

cher Gewerkschaftsbund[12], concerning a legal provision that recognised time spent in military or civil service for the calculation of redundancy pay, but failed to recognise seniority for periods of parental leave. Although the Court responded negatively to the question – on the basis that the situations were not comparable –, the judgment remains relevant because the Commission considered the hypothesis that, if parental leave were available only to women, the rule in question would constitute direct sex discrimination, occurring for reasons of reconciliation. It was, however, with *Riezniece*[13] and *Praxair MRC*[14] cases that the CJ more directly and decisively framed the disadvantage suffered due to the exercise of reconciliation rights as a form of indirect sex discrimination. This was based on the higher percentage of female workers taking parental leave, leaving it to national courts to verify this disproportionate impact on women. An analysis of these rulings demonstrates that while the Court, when addressing disadvantageous treatment arising from the exercise of reconciliation rights, has categorised such measures as discriminatory acts, it has stopped short of conceptualising reconciliation as a suspect category or a specific factor of discrimination. Even though the Court draws a comparison – most notably in *Riezniece* – between workers on parental leave and those remaining in active service, the legal framework applied to these cases consistently relies on the criterion of sex and the doctrine of indirect discrimination[15]. In both instances, the CJEU maintains that a situation of indirect sex discrimination may arise when a worker suffers a detriment or disadvantage as a result of exercising reconciliation rights.

With the adoption of Directive (EU) 2019/1158 of the European Parliament and of the Council, of 20 June 2019, on work-life balance for parents

[12] C-220/02, 8 June 2004.

[13] C-7/12, 20 June 2013.

[14] C-486/18, 8 May 2019.

[15] As noted by Ballester Pastor (*De los permisos parentales a la conciliación: expectativas creadas por la Directiva 2019/1158 y su transposición al ordenamiento español*, in *DRL*, 11, 2019, pp. 1109-1132, the scope of this case law is further constrained by the fact that the nexus is not automatic. It is imperative to demonstrate that the contested measure exerts a disproportionate impact on women; consequently, only measures of a general and abstract nature – such as a statutory norm, a collective bargaining provision, or an internal regulatory instrument – facilitate the identification of such gender-based disparity, thereby qualifying as indirect discrimination. Conversely, isolated or idiosyncratic instances of unfavorable treatment arising from the exercise of reconciliation rights do not constitute indirect discrimination.

and carers, there was an expectation that the matter would be clarified. As is well known, the aforementioned Directive introduced innovative features compared to its predecessors from various perspectives; specifically, for our purposes here, through the connection established between fostering a more equitable sharing of caregiving responsibilities between women and men, and gender equality in the labour market. Indeed, as previously highlighted, while the Directive creates rights for both male and female workers to facilitate the reconciliation of professional and private life – an equilibrium in which all workers have an interest –, it is also an instrument shaped by a gender perspective, conceived and designed to enhance equality between men and women in the labour market[16]. From this viewpoint, the objective of the Directive is more than reconciliation itself; it is the achievement of equality through the individualisation of reconciliation rights and flexible working arrangements to reach an equitable distribution of these responsibilities.

The point just raised might suggest that the Directive itself would provide some indication regarding the place of work-life balance within the context of European anti-discrimination law. However, despite the clear statement of the connection between the objective of promoting equality between men and women and the promotion of work-life balance[17], nowhere in the normative part of the Directive is the violation of reconciliation rights presented as a discriminatory act. In truth, not even retaliation against the exercise of such rights is linearly configured as such – whether based on sex – as might be expected, given the

[16] Oliveira, De Corte-Rodríguez, Lütz (*The New Directive on Work-Life Balance: Towards a New Paradigm of Family Care and Equality?*, cit., p. 317, noted that one of the most distinctive features of the Directive in question lies in the intersection it establishes between European social law and the law of equality and non-discrimination.

[17] Reference should be made, in particular, to Recitals 6 and 10. The former states that "work-life balance policies should (…) contribute to the achievement of gender equality by promoting the participation of women in the labour market, the equal sharing of caring responsibilities between women and men and the reduction of the gender income and pay gaps. The latter reveals the premise imposed by reality: that women tend to be more burdened by this challenge of reconciling the professional sphere with family demands (work-life balance remains a considerable challenge for many parents and workers with caring responsibilities, in particular because of the increasing prevalence of extended working hours and changing work schedules, which has a negative impact on female employment. (…) When they have children, women are likely to work fewer hours in paid employment and to spend more time fulfilling unpaid caring responsibilities. Having a sick or dependent relative has also been shown to have a negative impact on female employment, with some women leaving the labour market entirely)".

reasoning in the *Dekker* or *Webb* decisions[18], later codified in Directive 2006/54/EC (Article 2(2)(c), that discrimination based on pregnancy and maternity should be considered, *per se*, as direct sex discrimination[19] – or as discrimination on the grounds of a new and autonomous factor: reconciliation[20].

At first glance, and considering the title, one might be led to believe that Article 11 establishes anti-discriminatory protection for the exercise of reconciliation rights as an autonomous cause[21]. However, several arguments can be invoked to support the idea that the aforementioned article did not intend to go that far and deliberately left the question open, which, in fact, may be due to the fact that Article 19 of the Treaty on the Functioning of the European Union (TFEU) does not expressly mention reconciliation as a cause of discriminatory treatment, unlike sex, ethnicity, religion, belief, age, disability, and sexual orientation[22].

[18] C-32/93, 14 July 1994; C-179/88, 8 November 1990.

[19] See Cabeza Pereiro, *La directiva de conciliación de la vida familiar y profesional*, in *RDSoc*, 92, 2020, pp. 41-80, for whom the Directive "very deliberately" omits the answer to the question of the "place of reconciliation between family and professional life in the context of Anti-Discrimination Law", which corresponds to "hiding history", the social evolution of the roles of women and men, and the objectives behind fostering female co-responsibility; Castro Arguelles, *Conciliación de la vida familiar y laboral de progenitores y cuidadores: la transposición de la Directiva (UE) 2019/1158, por el Real Decreto-Ley 5/2023*, in *REDT*, 271, 2024, pp. 83-120; Ballester Pastor, *De los permisos*, cit., pp. 1112 ss. and Molina Navarrete, *La doctrina jurisprudencial por discriminación de género en el orden social*, Wolters Kluwer, 2020, pp. 248 ss. This Author emphasizes the concept of *multiple discrimination*: a female caregiver combines two conditions – being a woman and being a caregiver – which make her a primary target for discrimination; she would be at a disadvantage not only in relation to men who are not caregivers but also in comparison to women who are not caregivers and men who are caregivers.

[20] Suggesting, seemingly, the identification of this autonomous factor, viewed as a clear ground of vulnerability and with high discriminatory potential, Delgado Garrido, *Cuidar y trabajar sin ser discriminada: la STJUE C-38/24 Bervidi y la protección del cuidador informal en el Derecho antidiscriminatorio europeo y español*, in *RDSoc*, 112, 2025, pp. 119-144. Curiously, the most recent dir. 2023/970/EU appears, precisely, to take for granted that less favourable treatment due to the exercise of reconciliation rights constitutes discrimination on grounds of sex. Indeed, within the definition of the concept of discrimination for the purposes therein, the instrument clarifies, in art. 3 co. 2, that discrimination includes "any less favourable treatment, within the meaning of Directive (EU) 2019/1158 (…), based on sex, including with regard to paternity leave, parental leave or carers' leave".

[21] Igartua Miró, *Promoción de la igualdad de género a través de 'fórmulas de trabajo flexibles'. Reflexiones y propuestas a la luz de la Directiva (UE) 2019/1158*, in *Femeris*, 7, 2, 2022, pp. 86-114, and Fernández Prieto, *Conciliación de responsabilidades de progenitores*, cit., p. 6.

[22] It is true that other directives establish a prohibition of discrimination based on the nature of the employment contract – for instance, fixed-term work under dir. 1999/70/EC or

First, there is the fact that the body of the rule prohibits *less favourable treatment* rather than *discrimination* regarding the exercise of reconciliation rights, without any other provision in the Directive specifying that such treatment is considered discriminatory. Second, is the systematic element: the provision is situated between the rule guaranteeing workers' labour rights (Article 10) and the provision regarding protection against dismissal (Article 12). According to some literature, this reinforces the argument that Article 11 does not constitute a prohibition of discrimination, but rather a guarantee of the effectiveness of rights. Finally, the historical element is invoked. During the preparatory work, the Proposal for a Directive had given the heading *non-discrimination* to the provision in question, but the term *non* was removed in the final version of the text. This change was introduced by the European Parliament's legislative resolution of 4 April 2019, concerning the proposal for a Directive of the European Parliament and of the Council, on work-life balance for parents and carers and repealing Council Directive 2010/18/EU[23], without the document stating the reasons for the change[24].

The fact that, although the Directive aligns its purpose with the promotion of equal opportunities between women and men, placing reconciliation at the service of this objective, it does not explicitly qualify the less favourable treatment of a worker due to the exercise of reconciliation rights

part-time work under dir. 97/81/EC – factors that do not appear in art. 19 TFEU. However, it is manifest that these prohibitions differ from the subjective grounds of discrimination derived from art. 19 TFEU: neither part-time nor fixed-term work shares the subjective stigmatisation inherent in 'true' grounds of discrimination. The crux of the matter is that discrimination based on reconciliation, as conceptualised in the 2017 proposal for a directive, possesses the hallmarks of these subjective grounds; yet, it is neither expressly enshrined in art. 19 TFEU nor exclusively tethered to discrimination on grounds of sex – as it is underlined by Ballester Pastor, *La conciliación de responsabilidades: estado de la cuestión a la luz de la propuesta de Directiva de la Comisión Europea 1/de 26 de abril de 2017*, in *Lan Harremanak*, 38, 2017, pp. 67-92.

[23] COM(2017)0253, C8-0137/2017, 2017/0085(COD).

[24] Ambiguity is not confined to art. 11. Art. 15 of the EU instrument stipulates that, without prejudice to the competence of labour inspectorates or other bodies that enforce the rights of workers, including the social partners, Member States shall ensure that the body or bodies designated, pursuant to art. 20 of dir. 2006/54/EC, for the promotion, analysis, monitoring and support of equal treatment of all persons without discrimination on grounds of sex, are competent with regard to issues relating to discrimination falling within the scope of this Directive. Thus, while the provision explicitly invokes bodies dedicated to equality and non-discrimination on grounds of sex, it simultaneously refers, in elusive terms, to matters relating to discrimination falling within the scope of this Directive – a phrasing that hints at a broader expansion of anti-discriminatory protection.

as sex discrimination, might perhaps stem from the dilemma of classifying such cases – especially when the victim is a man – as direct or indirect discrimination, or even as discrimination by association[25].

Ballester Pastor[26] shares this opinion. The author suggests that the decision not to configure disadvantageous acts related to the exercise of reconciliation rights as sex discrimination could result from the following: if a man intended to exercise such a right and were subject to disadvantageous treatment for that reason, there would be something spurious about qualifying such conduct as sex discrimination. Indeed, the appeal to this discriminatory ground in the field of reconciliation is admittedly based on the idea of the structural disadvantage of women compared to men; precisely, the promotion of reconciliation aims to suppress this disadvantageous position. The author, however, counters that, in the final analysis, if a man is prejudiced by the exercise of reconciliation rights, it still makes sense to speak of sex discrimination, as that discriminatory act will be associated with rights traditionally exercised by women and intrinsically linked to gender stereotypes. She adds that one only needs to consider the concept of indirect discrimination to understand that the fact that some men are also harmed by conduct tending to negatively affect women above all does not invalidate their qualification as discriminatory on the grounds of sex. This was, indeed, the reasoning adopted by the CJEU in the mentioned *Riezniece* and *Praxair MRC* cases.

3.2.2. *A different perspective - reconciliation and discrimination on disability grounds: from Coleman to Bervidi*

The interconnection between protecting disability and fostering work-life balance, albeit reflected by the *Coleman* judgement[27], became much more conspicuous in the recent *Bervidi* case. On this occasion, the CJEU sustained that discrimination by association can also be established

[25] Highlighting this concern, García Testal, *Conciliación entre la vida profesional y la vida familiar: un análisis de la no discriminación, la corresponsabilidad y la flexibilidad como elementos para la igualdad laboral de las mujeres en la Directiva (UE) 2019/1158 y en su transposición al ordenamiento español*, in *Lan Harremanak*, 51, 2024, pp. 151-178.

[26] *De los permisos parentales a la conciliación: expectativas creadas por la Directiva 2019/1158 y su transposición al ordenamiento español*, in *DRL*, 11, 2019, pp. 1109-1132.

[27] C-303/06, 17 July 2008.

when the conduct that embodies it constitutes *indirect discrimination* – as the omission of relevant reasonable accommodation measures due to a female employee caring for a child with a disability. This conclusion immediately raises a question: had the child in the employee's care not suffered from that condition, how would the Court have framed the issue? In that hypothesis, could Directive (EU) 2019/1158, concerning the promotion of work-life balance, have been invoked? Does the failure to apply work-life balance tools, when due, constitute discriminatory behavior? On the basis of which factor? Given the ambiguity of that Directive, mentioned above, as well as the absence of a clear CJEU position regarding these queries, the *Bervidi* decision allows one to wonder whether a system is being constructed in which the failure to comply with work-life balance measures is framed in significantly different ways depending on whether the person being cared for presents a condition qualifiable as a disability. That is the main reason why, on our view, this judgement is a true landmark of the CJEU case law.

3.2.2.1. *The case - relevant facts and the Court's decision*

The Judgment of the CJEU regarding the *Bervidi* case arose from a request for a preliminary ruling submitted by the *Corte Suprema di Cassazione*, the Italian Supreme Court, which was faced with an appeal lodged by a certain worker who had already received two unfavorable judicial decisions in the lower courts. G.L., an employee of *AB SpA* and, furthermore, the mother and caregiver of a child with a disability resulting in a medically certified total incapacity, requested that her employer adjust her working hours so that she could work on a fixed schedule, exclusively during the morning period. This would allow her to provide necessary assistance and care to her son in the afternoon, specifically accompanying him to various therapies suited to his condition. She even proposed her assignment to lower-level duties, by agreement, to facilitate the adaptation of her working conditions to her needs. Since the employer only offered a provisional solution, the employee initiated legal action, invoking discrimination – due to the omission of the requested measures and considering the different position adopted regarding other workers who, for health reasons, had been deemed unfit, temporarily or permanently, to perform their activities under normal conditions. She sought a court order for AB SpA to permanently assign her

to a fixed-schedule post between 8:30 and 15:00, or at least one compatible with her son's needs, as well as to adopt a plan to eliminate discrimination and to pay her compensation for damages.

In the first instance, G.L. was unsuccessful because the court held that she lacked standing to bring an action for employment discrimination, as she was not herself a person with a disability and thus not entitled to the relevant adjustment measures. On appeal, the *Corte d'Appello di Roma*, although invoking the CJEU's *Coleman* case-law and considering, based on the concept of discrimination by association, that the employee could indeed rely on the protective provisions against discrimination as a caregiver of someone with a disability, nonetheless stated that the employer had not engaged in any discriminatory conduct, having implemented some reasonable accommodations, albeit provisional ones.

G.L. appealed once more to the *Corte di Cassazione*, which decided to refer a set of questions to the CJEU. In summary, it became necessary to clarify the following: considering that the obligation for an employer to adapt working conditions to the situation of the employee concerned, up to the limit of not imposing a disproportionate burden, derives from the principle of prohibition of discrimination on the grounds of disability; and, on the other hand, that this principle can be said to be violated regarding an employee even if they are not the person with the disability, but rather someone *associated* with them, namely by being dependent on their care – considering these two premises, could one go further and affirm the potential occurrence of discrimination by association on the grounds of disability due to the omission of the relevant reasonable accommodation measures? It should be noted that such a conclusion implies that the disability of a third party, rather than the employee, is the *grounds* for that obligation of reasonable accommodation, but also, albeit indirectly, the *parameter* for defining its scope, given that the employee's specific needs will depend on the particularities of that associated third party. Identifying precisely the crucial point of the issue – to determine whether, since the *Coleman* Judgment aimed expressly and solely at direct discrimination, it would be conceivable to apply the concept of discrimination by association likewise to cases of indirect discrimination – the *Cassazione* addressed the following questions to the CJEU[28]:

[28] A third question was also referred, which will be disregarded as it is of little relevance to the analysis undertaken here. In any event, it was deemed inadmissible by the Court.

(i) Should European Law be interpreted – where applicable on the basis also of the [UN Convention] – as meaning that a family caregiver of a severely disabled child who claims to have suffered indirect discrimination in an employment context as a result of the care provided by that individual is entitled to rely on the anti-discrimination protection that would be afforded to that disabled person, if they were the worker, by [Directive 2000/78]? and (ii) If the answer to [the first question] is in the affirmative, should European Law be interpreted – where applicable on the basis also of the [UN Convention] – as meaning that it is incumbent on the employer of the aforementioned caregiver to make reasonable accommodation to guarantee compliance – also in favor of said caregiver – with the principle of equal treatment in relation to other, modelled on the provisions laid down in relation to persons with disabilities in Article 5 of [Directive 2000/78][29]?

As will be seen in more detail, the Court, following the Opinion of the Advocate General, affirmed that Articles 1, 2(1) and (2)(b) of Directive (EU) 2000/78 must be interpreted as meaning that "the prohibition of indirect discrimination on grounds of disability applies to an employee who does not himself or herself have a disability but who is subject to such discrimination because of the assistance that that person provides to his or her child who has a disability, which enables that child to receive the primary care required by virtue of his or her condition"[30]. In other words, the CJEU judges considered that the omission of the required reasonable accommodation measures – which is unequivocally stated to constitute indirect discrimination – can occur not only when justified by the employee's disability but also when its origin lies in another person with that condition who is associated with them, specifically a child in their care. Therefore, the Court adds, to avoid indirect discrimination, the employer is required "to make reasonable accommodation, within the meaning of Article 5 of that directive, in respect of an employee who does not himself or herself have a disability but who provides, to his or her child who has a disability, the assistance which enables that child to receive the primary care required by virtue of his or her condition, provided that that accommodation does not impose an unreasonable burden"[31].

See §§ 20 ss. (in particular, § 22) of the Opinion of Advocate General Athanasios Rantos, delivered on 13 March 2025.

[29] Regarding the case in Italian case-law, see Biondo, *Caregiver, chi era costui? Il modello italiano avanti alla Corte di Giustizia*, in *EQUAL*, 2, 2024, pp. 240-258.

[30] § 66.

[31] § 80.

It is important to emphasize that, throughout the reasoning provided to support these conclusions, the CJEU relied not only on the Directive but also on Article 21 of the Charter of Fundamental Rights of the European Union (CFREU), as well as Articles 24 and 26 on the protection of children, and also on the United Nations Convention on the Rights of Persons with Disabilities. The latter, approved by the EU in 2009[32], pays special attention to the protection of children with disabilities – such as the employee's son – and its Article 2(3) states that discrimination on the basis of disability includes all forms of discrimination, *including the denial of reasonable accommodation*.

3.2.2.2. *Observations on the Judgment*

3.2.2.2.1. *The prior acquis: the obligation of reasonable accommodation; the concept of discrimination by association*

The key idea emerging from the prohibition of discrimination on grounds of disability is, evidently, that no one should be subject to disadvantageous treatment due to that condition. This is the core imperative arising from the aforementioned Directive (EU) 2000/78, which, as is well known, prohibits all forms of discrimination, notably direct and indirect: pursuant to Article 2, direct discrimination is prohibited – that is, any act of less favourable treatment of one person compared to another in a comparable situation on the grounds of disability – as is indirect discrimination, which results from a provision, criterion, or practice that, although apparently neutral, is liable to put persons with a disability at a particular disadvantage compared with other persons.

At the same time, however, it is important to highlight the provisions of Article 5, which require Member States to ensure that employers take "appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer".

This provision is linked, as evident from its wording, to the very concept of discrimination – namely indirect discrimination – or, more precisely, to the terms under which the qualification of a discriminatory act as such may be neutralized or justified. Article 4(1) of the Directive allows Member

[32] Council Decision 2010/48/EC of 26 November 2009.

States to provide that a difference of treatment based on one of the aforementioned grounds, including disability, shall not constitute discrimination where, "by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate". This refers to the frequently mentioned "occupational requirement" criterion.

Regarding indirect discrimination, on the other hand, Article 2(2)(b)(i) provides that it shall not be deemed as such if the provision, criterion, or practice in question is objectively justified by a legitimate aim and the means of achieving that aim is appropriate and necessary. However, Article 2(2) provides for a distinct possibility of justification applicable only to indirect discrimination specifically on the grounds of disability. According to point (b)(ii), it is justified if the employer (or any person or organisation to whom the Directive applies) is obliged, under national legislation, to take appropriate measures in line with the principles set out in Article 5, in order to eliminate the disadvantages entailed by a potentially discriminatory provision, criterion, or practice. As can be seen, therefore, the imperative to adopt reasonable measures to adjust working conditions to the specific needs of a person with a disability is closely related to the very concept of indirect discrimination; one of the ways – a specific way for this particular ground of discrimination – to neutralize the discriminatory nature of an act is, precisely, the fulfilment of such an obligation.

Legal literature has emphasized the particular importance of this form of justification within the scope of discrimination on grounds of disability. Indeed, as Fredman[33] points out, even when invoking the first segment of Article 2(2)(b) – namely sub-paragraph (i) – the employer must demonstrate not only the legitimacy of the objective to be achieved but also the appropriateness and necessity of the means used to achieve it. This would, naturally, entail proving the unsuitability, unfeasibility, or the lack of reasonable expectation (*inexigibility*) of measures to adapt working conditions to the individual with a disability. Moreover, identical considerations would also apply to the aforementioned occupational requirement as a means of justifying direct discrimination on grounds of disability; the fulfilment of the requirements regarding the legitimacy of the objective pursued and the

[33] *Discrimination Law*, Oxford University Press, 2022, pp. 42-43 and 305-306.

proportionality of the potentially discriminatory measure adopted must be carefully assessed.

Indeed, in the case of disability, the crucial importance of the imperative to adopt measures to adjust external conditions to the situation of the employee concerned is easily understood, in pursuit of the objective of substantive equality[34] – an imperative that, despite emerging relatively late in the European Union, was already established in legal systems such as the American, Canadian, or the British[35]. The fact is that, given identical conditions for a worker with a disability and a worker without any limitations, the latter will more easily demonstrate greater efficiency and productivity. In this regard, the formulation by Hepple[36] is particularly expressive: "The differences between men and women (…), Black and White people, persons with different sexual orientations, or of different faiths or age groups are generally treated as irrelevant. But the law does not expect disabled people to be treated in exactly the same way as those who are not disabled. The reason for this is that formal equality, comparing a disabled person with others, would not result in genuinely equal treatment (…)".

Consequently, the conclusion has prevailed that any disadvantageous act targeting an employee with a disability must, at the risk of being considered discriminatory, be preceded by the adoption of appropriate reasonable accommodation measures. Indeed, despite the narrowness of the concept of disability adopted in the *Chacón Navas* case[37], the CJEU took that opportunity to clarify that "the prohibition, as regards dismissal, of discrimination on grounds of disability contained in Articles 2(1) and 3(1)(c) of Directive 2000/78 precludes dismissal on grounds of disability which, in the light of the obligation to provide reasonable accommodation for people with disabilities, is not justified by the fact that the person concerned is not competent, capable and available to perform the essential functions of his post"[38].

[34] See, for example, Palacios, *El derecho a la igualdad de las personas con discapacidad y la obligación de realizar ajustes razonables*, in *Los derechos de las personas con discapacidad: perspectivas sociales, políticas, jurídicas y filosóficas*, Dykinson 2004, pp.187-203.

[35] Schiek, Waddington, Bell (coord. Droshout), *Cases, Materials and Text on National, Supranational and International Non-Discrimination Law*, Hart Publishing, 2007, p. 630.

[36] *Equality - the legal framework*, Hart Publishing, 2014, p. 91. See, also, Schiek, Waddington, Bell (coord. Droshout), *Cases, Materials*, cit., pp. 631 ss.

[37] C-13/05, 11 July 2006.

[38] § 52.

In the landmark case *HK Danmark*[39] – of pivotal importance for this purpose, though not exclusively –, the Court addressed whether an employer could legitimately dismiss the workers concerned even if it were demonstrated that their absences resulted from the failure to adopt proper measures to enable their performance, given their disabilities. The Court ruled that such a procedure would violate the Directive. The Judgment states: "the circumstance that an employer has failed to take those measures may have the consequence, *having regard to the obligation under Article 5 of Directive 2000/78*, that the absences of a worker with a disability are attributable to the employer's failure to act, not to the worker's disability". Thus, "should the national court find that the absences of the workers are attributable, in the present cases, to the employer's failure to adopt appropriate accommodation measures, Directive 2000/78 would preclude the application of a provision of national law such as that at issue in the main proceedings" [40].

Furthermore, the Court answered in the affirmative regarding whether such a provision, when applied to workers whose absences were caused by a condition qualifying as a disability, would violate the Directive[41]. It would be considered indirectly discriminatory – "it is thus apparent that the 120-day rule in that provision is liable to place disabled workers at a disadvantage and so to bring about a difference of treatment indirectly based on disability within the meaning of Article 2(2)(b) of Directive 2000/78" – unless it could be considered justified by legitimate aims and limited to what is indispensable to achieve them (an assessment which it referred to the referring court)[42].

The relationship between the (non-)fulfilment of the obligation of reasonable accommodation and the occurrence of discrimination was also clearly demonstrated in the *Nobel Plastiques Ibérica* case[43]. Pertaining to the Spanish legal system, the case concerned an employee with a condition qualifying as a disability who was dismissed for "objective reasons" – specifically due to

[39] C-335/11 and C-337/11, 11 April 2013.

[40] Emphasis added.

[41] §§ 69 ss.

[42] The Danish Government argued that the legal framework in question was suitable for promoting the recruitment and retention of individuals liable to incur such absences. The companies involved alleged that this regime allowed them to maintain the employment relationship for a longer period with workers who incurred such absences.

[43] C-397/18, 11 September 2019.

levels of productivity, attendance, and versatility below the desired standard, according to the employer's criteria. The CJEU declared that: "Article 2(2)(b)(ii) of Directive 2000/78 must be interpreted as meaning that the dismissal for "objective reasons" of a worker with a disability, on the ground that he or she meets the selection criteria taken into account to determine the persons to be dismissed, namely having a productivity rate below a certain level, less versatility in the company's workstations and a high rate of absenteeism, *constitutes indirect discrimination on grounds of disability, within the meaning of that provision, unless the employer has previously provided reasonable accommodation, within the meaning of Article 5 of that directive*, in respect of that worker, in order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities, which it is for the national court to verify"[44].

In this regard, reference should finally be made to the *Tartu Vangla* case[45], in which the CJEU stated that the Directive precluded a regime that established an absolute impossibility for a worker to perform a certain function due to their disability, without allowing for a verification of whether the worker would be able to perform those functions once the relevant reasonable accommodation measures had been adopted. At issue was a prison guard with auditory acuity below the level set by Estonian legislation, which provided that, in such a case, it was absolutely impossible to maintain the worker in their post. A similar decision was reached in the *Komisia* case[46], regarding which the CJEU ruled that the Directive is incompatible with the denial of a blind person's right to serve as a juror in criminal proceedings solely on the basis of their blindness[47].

The case law of this Court is further relevant as it provides remarkable assistance in determining which measures may be considered included in the general obligation of reasonable accommodation – a concept that is, evidently, indeterminate[48]. Its concretization depends on an analysis of the appropriateness of the measure in light of the intended purpose, which, in turn, results from

[44] § 75.

[45] C-795/19, 15 July 2021.

[46] C-824/19, 21 October 2021.

[47] An analysis of these judgments can be found in Gyulavári, *Recent CJEU case law on 'reasonable accommodation' at work: towards the recognition of a new discrimination form*, ERA Forum, 2023 (https://link.springer.com/article/10.1007/s12027-023-00772-7#citeas), pp. 1-17.

[48] For example, Cinelli, *Insufficiente per la Corte di Giustizia la tutela che l'Italia assicura ai lavoratori disabli: una condanna realmente meritata?*, in *RIDL*, 2013, pp. 935-938.

the limitation presented by the worker in correlation with the characteristics of their professional activity. However, it also depends on factors such as the respective effect on the business organization and other workers, as well as the impact on the employer, particularly from an economic perspective. As stated in the *HK Danmark* judgment[49], it is a broad concept, to be understood "as referring to the elimination of the barriers to full and effective participation of persons with disabilities in professional life on an equal basis with other workers". The ruling made it clear, in particular, that measures involving the readjustment of working hours are included within that open-ended concept – which, moreover, could already be inferred from Recital 20 of Directive (EU) 2000/78[50].

Other potential measures would include adaptations to the workstation and work tools, the provision of vocational training, transfer to a different place of work[51], transitioning to a remote work model[52], the guarantee of a parking space close to the workplace[53], the redistribution of tasks, or even reassignment to a different post[54].

[49] § 53, which refers to the United Nations Convention, and § 54.

[50] § 64.

[51] Vicente (*V – Igualdade e não discriminação nas relações laborais*, in aa.vv., *Direito do Trabalho – Relação Individual*, Almedina, 2023, p. 340, notes a decision of 27 July 2022 by the Supreme Court of the Czech Republic, which held that a request for a transfer of the workplace constituted a reasonable accommodation measure. The case involved a prison service employee with a physical disability who requested a transfer to a prison facility closer to his residence to avoid traveling 300 kilometers per week; the request was refused, leading the worker to resign. The court considered the rejection of the transfer request to be an unjustified refusal to provide reasonable accommodation.

The decision is further significant for asserting that a worker's request for their working conditions to be adjusted does not necessarily presuppose the presentation of a corresponding medical certificate.

Referring to an Italian case, decided by the Court of Pistoia on 30 September 2005, which held that the employer had breached the duty of reasonable accommodation by failing to keep the worker at her usual location and transferring her to another, less suited to her situation, Schiek, Waddington, Bell (coord. Droshout), *Cases, Materials*, cit., p. 692.

[52] In the Italian legal system, provision is made for *lavoro agile* (smart working) for workers with disabilities, although legal scholarship notes that such a solution could always be derived from the general obligation of reasonable accommodation. Peruzzi, *La protezione dei lavoratori disabili nel contratto di lavoro*, in *VTDL*, 4, 2020, pp. 945-965. See also, West, Anderson, *Telework and employees with disabilities: accommodation and funding options*, in *Journal of Vocational Rehabilitation*, 23, 2005, pp. 115-122.

[53] In Schiek, Waddington, Bell (coord. Droshout), *Cases, Material*, cit., p. 638, reference is made to an Irish case, dated 23 January 2002, in which the court held that such a measure was required, alongside a change in the tasks assigned to the worker.

[54] Interesting examples may be found in Hepple, *Equality…*, cit., pp. 94-95.

Regarding this latter point, the aforementioned *HR Rail* case[55] must be highlighted. Although some legal scholars[56] already argued that the reassignment of the employee should be considered a possible reasonable accommodation measure – and even that the alternative post should be adjusted to the employee's condition before being offered to them –, the ruling of the CJEU in this case was decisive. At issue was a worker who had been fitted with a pacemaker. Since the device was sensitive to electromagnetic fields, such as those emitted by the railway tracks with which the employee came into contact in the exercise of his usual duties, it was concluded that he could no longer perform them and that: "Article 5 of Directive 2000/78 must be interpreted as meaning that the concept of "reasonable accommodation" for disabled persons, within the meaning of that article requires that a worker, including someone undertaking a traineeship following his or her recruitment, who, owing to his or her disability, has been declared incapable of performing the essential functions of the post that he or she occupies, be assigned to another position for which he or she has the necessary competence, capability and availability, unless that measure imposes a disproportionate burden on the employer"[57].

It also follows from the Directive that such measures are only required if they do not impose a disproportionate burden on the employer, provided that, where State support exists for their adoption, they should not be considered as imposing such an excessive burden. Although the latter is also an

[55] C-485/20, 10 February 2022. See Tamás Gyulavári, "Recent CJEU", cit., p. 12.

[56] Regarding the French legal system, see Miné, Marchand, *Le Droit du Travail en pratique*, Eyrolles, 2014, p. 238. According to the authors, "when the employee is recognized as a disabled worker, the proposal for reassignment must take into account the requirement of 'reasonable accommodation' of a workstation to enable the maintenance of employment".

A coincident opinion is held, within the Italian legal order, by Giubonni, *Sopravvenuta inidoneità alla mansione e licenziamento. Note per una interpretazione 'adeguatrice'*, in *RIDL*, 2, 2012, pp. 289-309 and by Casale, *Malattia, inidoneità psicofisica e handicap nella novella del 2012 sui licenziamenti*, in *ADL*, 19, 2, 2014, pp. 401-423, for whom, since the failure to adopt accommodation measures is in itself a discriminatory act, denying a worker with a disability the possibility of reassignment should lead, in judicial proceedings, to the conclusion that the alleged incapacity for work was not, after all, the real cause for the termination of the contract, which would Schiek, Waddington, Bell (coord. Droshout), *Cases, Materials*, cit., pp. 687 ss.

[57] § 49.

indeterminate and permeable concept, subject to different interpretations[58], we would highlight the following aspects: first, the fact that there is no public support for the adoption of a specific accommodation measure does not lead, directly and necessarily, to the conclusion that it is not required for imposing a disproportionate burden; second, as follows from the regime of the burden of proof in discrimination matters, it is the employer who must demonstrate that the omitted measures would have imposed a disproportionate burden; third, as Vanessa Cordero Gordillo[59] points out, the invocation of the excessive cost of the measure can only be seen as an exceptional possibility, otherwise the duty in question – the true cornerstone of the protection owed to workers with disabilities – would ultimately prove to be very timid, as if requiring no more than minor adjustments; it is crucial to ensure that the duty of reasonable accommodation does not turn into a mere programmatic principle[60]...

Notwithstanding the remarkable contribution of the CJEU to defining the relationship between the obligation of reasonable accommodation and the principle of the prohibition of discrimination on grounds of disability – given that the wording of Article 2(2)(b)(ii) of the Directive is not particularly clear – its case law prior to the *Bervidi* judgment does not seem to contain an unequivocal statement that the mere omission of the measures required by that obligation constitutes, in itself, discriminatory behaviour.

[58] For a comparative law overview, see Schiek, Waddington, Bell (coord. Droshout), *Cases, Materials*, cit., pp. 629 ss.

[59] *Igualdad y no discriminación de las personas con discapacidad en el mercado de trabajo*, Tirant lo Blanch, 2011, pp. 150-151.

[60] In a similar vein, see Alonso Bravo, *Integración laboral de las personas con discapacidad y crisis económica*, in *RUCT*, 15, 2014.

In Denmark, it has already been ruled that an employer failed to provide proof of a disproportionate burden in the case of a social worker employed in a prison facility. Having suffered from post-traumatic stress disorder following a violent assault, the worker began performing duties within the community service team. However, due to a reorganization of services, she was reassigned to work with inmates, including those with psychiatric disorders. Following the refusal of the worker – who had, in the meantime, requested assignment to a different type of duty – the employer terminated the employment relationship. The body responsible for equality and non-discrimination, in a decision dated 11 August 2020, concluded that the employer could have assigned the worker duties that did not involve contact with mentally ill inmates, as it had previously done with another social worker; it also stated that there was no evidence of the worker's inability to perform the essential functions of her post. This case is noted by Vicente, *Igualdade e não discriminação nas relações laborais*, cit., pp. 342-343.

Evidently, there was also no discernible answer to the question of whether such omissive conduct would constitute direct or indirect discrimination. It must be emphasized, in any case, that at least since the ratification of the aforementioned United Nations Convention by the European Union, the Court should have been bound to recognize such a failure as a form of discrimination on the grounds of disability. Indeed, it should be reiterated that, according to Article 2, paragraph 3, of that Convention, discrimination includes the denial of reasonable accommodation. As will be further discussed, the *Bervidi* decision took this step forward in clarifying the legal significance of the failure to comply with the obligation of reasonable accommodation within the framework of equality and non-discrimination on grounds of disability.

Although not expressly recognized in the Directives – we refer to the triad of core Directives in this field: 2000/43; 2000/78; 2006/54 –, discrimination by association must be mentioned as an integral part of the *acquis* of European Union anti-discrimination law. According to Maneiro Vázquez[61], the recognition of this concept by the CJEU illustrates the role of this jurisdictional body in ensuring an increasingly extensive and versatile anti-discriminatory protection, capable of fulfilling its protective purpose despite a certain restrictive nature of the Directives.

This concept was recognized beyond any doubt in the aforementioned *Coleman* case, concerning discrimination on grounds of disability[62]. In this

[61] *La discriminación por asociación: desafíos sustantivos y procesales*, Aranzadi, 2021, pp. 23 and 37.

[62] Nevertheless, we would argue that the concept is applicable in other domains. By virtue of the principle of conforming interpretation, national legal practitioners must recognize this type of discrimination regarding disability, as well as all other grounds to which the set of considerations put forward in that judgment are applicable, *mutatis mutandis*. Moreover, as will be seen below, the CJEU has applied similar reasoning in other cases concerning different discriminatory grounds. Regarding the Spanish legal system, Molina Navarrete (*La doctrina*, cit., pp. 261 ss.) notes a case where the concept was applied to a situation not based on disability: the decision of the Trib. Superior de Justicia de Galicia of 13 April 2018 appealed to this concept in a situation involving the workplace bullying (*mobbing*) of the husband of a worker who had previously been a victim of sexual harassment within the company; the court considered the conduct directed at the husband as discriminatory on grounds of sex, by association. He further refers to the decision of the Trib. Superior de Justicia de Las Palmas of 29 August 2019, which reportedly considered the dismissal of a worker – allegedly due to a decrease in performance – to be discriminatory by association, as she was in a relationship with a trade unionist worker and the dismissal followed a series of demands he had submitted to the employer in that capacity.

case, a worker agreed to the termination of her contract by mutual agreement following a proposal from the employer. She later claimed to have been the victim of discrimination in the form of harassment, arguing that the termination of the contract should be attributed to the employer. She invoked discrimination on grounds of disability, not because she herself had a condition qualifying as such, but because she was the primary caregiver for a young son who suffered from apnea attacks, as well as congenital laryngomalacia and bronchomalacia. The child's pathologies were framed within the concept of disability, and the Court ruled that, although the employee herself did not suffer from these pathologies, she had indeed been discriminated against on grounds of disability – that of the son in her care, with whom she was, *hoc sensu*, *associated*[63].

The CJEU further confirmed the concept of discrimination by association in the later *Chez* case[64], concerning racial/ethnic discrimination. In this case – regarding which Advocate General Kokott, unlike the judges of the Court, repeatedly and expressly referred to the concept of discrimination by association –, Ms. Nikolova, the owner of a small business in a

[63] On this, Mestre, *Discrimination by association: protected by EU Law but limiting the scope of Mangold*, in *ELRep*, 2008, pp. 300-305.

[64] C-83/14, 16 July 2015. According to Maneiro Vázquez, *La discriminación por asociación*, cit., pp. 24, pp. 68 ss. and 83 ss., this was also confirmed in the *Hakelbracht* case, concerning discrimination on grounds of sex (C-404/18, 20 June 2019). In *Hakelbracht*, the idea of association, although not phrased in those exact terms, resulted from an act of retaliation – considered discrimination under dir. 2006/54/EU – directed at a person other than the one who was originally discriminated against on grounds of sex (due to pregnancy) and who had taken legal action. The retaliation was exercised against a worker who had provided informal support to the victim on several occasions, namely within the context of the legal proceedings. In this regard, the CJEU stated that "the effectiveness of the protection required by dir. 2006/54/EU against discrimination on grounds of sex would not be assured if that protection did not cover measures which an employer might be led to take against employees who have, formally or informally, defended the protected person or testified in his or her favour. Indeed, those employees, who are ideally placed to support that person and to be aware of cases of discrimination committed by their employer, might then be discouraged from acting in that person's interest for fear of being deprived of protection if they do not meet certain formal requirements, such as those at issue in the main proceedings, which could seriously compromise the objective pursued by dir. 2006/54/EU by reducing the likelihood that cases of discrimination on grounds of sex will be detected and resolved". Therefore, art. 24 must be interpreted "as meaning that the employees referred to (…) other than the person who has been the victim of discrimination on grounds of sex, must be protected in so far as they may be disadvantaged by their employer because of the support they have, formally or informally, given to the person who has been the victim of that discrimination" (§§ 34 and 35).

district where the majority of the population was of Roma origin, invoked ethnic discrimination despite not belonging to that group herself. This was due to the fact that the company responsible for installing electricity meters placed them in that district at an inaccessible height, making it impossible to consult them, a practice not found in areas not predominantly inhabited by Roma people. The Court concluded that Directive 2000/43/EC applied, as its scope should be defined according to the discriminatory ground in question rather than depending on the actual membership of the alleged victim in the corresponding category. Ms. Nikolova had suffered discriminatory treatment based on ethnicity (of the majority of the district's inhabitants)[65] and the effects of their stigmatization. Although in less crystal-clear terms, the Judgment clarified in this context, in line with the position of Advocate General Kokott[66], that indirect discrimination, and not only direct discrimination, can take the form of discrimination by association[67]. Indeed, in his Opinion, Advocate General Athanasios Rantos recalls precisely this to support an identical conclusion regarding the *Bervidi* case[68]. The Court, which, as we shall see, confirmed this, also recalled the *Chez* decision[69].

3.2.2.2.2. *The apport of the Judgment*

As previously mentioned, the CJEU had not yet stated, expressly and unequivocally, that the mere omission of appropriate reasonable accommodation measures would constitute discriminatory treatment. In fact, until the *Bervidi* case was brought up before it, the Court had never been directly called upon to address such a question. However, not only does this result from the broad scope of the concept of discrimination set out in the United Nations Convention, ratified by the Union, but it can also be said to be a natural corollary of the Directive itself. The latter aims to establish a general framework for ensuring equal treatment in employment and occupation for all persons and, specifically, of Article 5, which – before clarifying the meaning of the reasonable accommodation imperative – stipulates that, "in order to guarantee compliance with the principle of equal treatment in relation

[65] §§ 59 and 60 of the Opinion.
[66] §§ 102 ss. of the Opinion.
[67] Maneiro Vázquez, *La discriminación por asociación*, cit., pp. 79 ss.
[68] §§ 36 ss. of the Opinion.
[69] § 56.

to persons with disabilities, reasonable accommodation shall be provided". In other words, the adoption of these measures is both an expression and a requirement of the principle of equality. Recall the evocative words of Bob Hepple, reproduced *supra*.

In any case, we believe it can be affirmed that, following the *Bervidi* decision, it has become clear within the Court's case law that the failure to observe required measures for adjusting working conditions in light of a disability situation constitutes discrimination on that ground. Indeed, the Court seems to have taken this as self-evident – and not only that, but also that such omissive conduct constitutes *indirect* discrimination.

On this last point, however, Advocate General Athanasios Rantos explored the matter in greater depth. After recalling the concept of indirect discrimination, he explains, with the present case in mind: "In my view, the typical example of such discrimination is the introduction by the employer, in a general manner, of inflexible patterns of working time. That rule is formulated in neutral terms in that it applies to all employees but it is particularly disadvantageous for family caregivers of disabled children, who need more flexible working hours in order to be able to provide the care and assistance which such children require in view of their health status"[70]. He further adds that "the provision of reasonable accommodation makes it possible to remedy a situation of indirect discrimination"[71]. We would argue that he is correct. In fact, the omission of accommodation measures appropriate to the situation of the person concerned can be viewed as the application of standard working conditions to that person, which are designed in a neutral manner; however, despite their apparent neutrality and their *a priori* harmlessness, they have a particularly unfavorable impact on a specific category of workers – those who, on grounds of disability, require accommodations. It may be argued that classifying this omissive conduct as indirect discrimination opens the door to a potentially overbroad possibility of justification, which would not occur within the framework of direct discrimination. But the truth is that, since the essential parameter for the justification of indirect discrimination is the principle of proportionality, it

[70] § 46 of the Opinion.
[71] § 52 of the Opinion.

is already inherent in the very formulation of the obligation of reasonable accommodation[72]…

The aspect to which the Court devotes the greatest attention is, undoubtedly, the question of whether indirect discrimination – or, at least, this form of indirect discrimination – can be accepted as occurring *by association*[73]. On this point, although the Judgment reveals a carefully reasoned and relatively dense foundation, the Court's conclusion is almost syllogistic: *if* the Directive precludes discriminatory practices in both direct and indirect forms, *and* if "the principle of equal (…) applies not to a particular category of person but by reference to the grounds mentioned in Article 1 thereof, so that that principle is intended to benefit also persons who, although not themselves a member of the race or ethnic group concerned, nevertheless are subject to less favourable treatment or a particular disadvantage on one of those grounds"[74], then "the principle of non-discrimination laid down in Article 21(1) of the Charter and given concrete expression by Directive 2000/78 also covers indirect discrimination "by association" on grounds of disability"[75].

Following the considerations already put forward by the Advocate General, the Court invokes in favor of this interpretation, in addition to the instruments already mentioned, the decision of the European Court of Human Rights in the case of *Guberina v. Croatia* (22 March 2016). In that case, the Court precisely held that the unfavorable treatment of a person on account of the disability of a child for whom they provide care constitutes discrimination on grounds of disability for the purposes of Article 14 of the European Convention on Human Rights, regardless of whether it is characterized as direct or indirect discrimination[76]. In the present case, the applicant had invoked the non-application of a protective tax regime in light of the dependent's disability.

On the other hand, and once again in agreement with the Advocate

[72] With interest, regarding the criteria for delimiting the required measures and the relevance, in this respect, of the proportionality parameter, see Schiek, Waddington, Bell (coord. Droshout), *Cases, Materials*, cit., pp. 635 ss., pp. 665 and 666.

[73] Highlighting this aspect as well, see Impicciatore, *La discriminazione per associazione del prestatore di cura nel recente dialogo 'creativo' tra le Corti*, in *DSL*, 2, 2025, pp. 35-47.

[74] § 56.

[75] § 65.

[76] § 60. See § 42 of the Advocate General's Opinion.

General, it refers to the position already conveyed by the Committee on the Rights of Persons with Disabilities, established within the United Nations and created by the Optional Protocol to the United Nations Convention. In its General Comment No. 6 of 26 April 2018, the Committee stated that the prohibition of discrimination on this ground aims to protect persons presenting that condition as well as those in their immediate circle, starting with parents; it employed the term "discrimination by association" and did not distinguish, in this context, between direct and indirect discrimination[77].

In the subsequent part of the ruling, regarding the second question raised, the Court takes the conclusion of the aforementioned syllogism as a premise for analysis and, coupling it with another assumption, induces a new logical assertion: *if* the principle of non-discrimination enshrined in Article 21(1) of the Charter and given concrete expression in Directive 2000/78 also covers indirect discrimination "by association" on grounds of disability, *and* if "under Article 5 of Directive 2000/78, in order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities, reasonable accommodation shall be provided"[78], then "the employer is obliged to provide reasonable accommodation (…), as regards such an employee [who has a child with a disability in their care][79].

To support this conclusion, the CJEU invokes, in addition to Article 2, Article 7 of the United Nations Convention, which refers to the imperative of protecting children with disabilities, and similarly, Articles 24 and 26 of the CFREU as crucial interpretive references for the Directive. Significantly, it recognizes that if this were not the case, "the prohibition of indirect discrimination "by association" of a worker who provides assistance to his or her child with a disability (…) would be deprived of a significant part of its useful effect"[80]. Once again, the Court's line of reasoning coincides with that traced by Advocate General Rantos, according to whose Opinion the

[77] § 64. See §§ 38 e 39 of the Advocate General's Opinion. Rantos points out that the Committee's position was reiterated in 2022 (Communication n. 51/2018 of 26 August 2022) regarding the Italian legal system, which, by failing to adequately protect caregivers of persons with disabilities, would expose them to discriminatory conduct by association.

[78] § 75.

[79] § 75.

[80] § 74.

Directive "means that the family caregiver of a disabled child is entitled to rely in legal proceedings, under the prohibition of indirect discrimination by association, on the protection against discrimination which would be afforded to the disabled person himself if that person were the worker, if that directive is not to be deprived of part of its effectiveness"[81].

It should be observed that, from the moment the obligation of reasonable accommodation is conceived by reference not to the worker's own disability but to the needs experienced by the worker due to the condition of a dependent, a reconfiguration of its object tends to occur. This is despite the fact that some of its potential manifestations (redefinition of working hours, transition to telework, change of workplace, etc.) may make sense in either scenario – that is, whether the person with a disability is the worker themselves or whether it is another person under their care. Consequently, the adjustments are no longer intended to tailor working conditions to the physical, psychological, or similar limitations of the person performing the work, but rather to adjust them to the needs of reconciling professional obligations with the duties of care toward their dependent. In the words of the Advocate General[82], the employer's obligation will emerge "in the form of accommodation provided to the worker as a caregiver".

What has just been said brings us closer to a conclusion that, in light of this Judgment, seems inescapable. Although the Court does not mention the word "reconciliation" at any point, the connection between the parameters within which it operates and the field of work-family reconciliation is unequivocal[83]. Moreover, symptomatically, the word *caregiver*, applied to the worker, is used in thirteen passages of the ruling and over forty times in the Advocate General's Opinion[84]. We would tend to suggest that the sense of both this Opinion and the decision would remain identical if, instead of G. L.'s status [as a caregiver], her status as the *mother* of the child with a disability were highlighted, since, in this case, the employee held both.

As is well known, the protection of work-family reconciliation within the European Union framework has evolved in the relatively recent past

[81] § 43 of the Opinion. See also §§ 53 and 60.

[82] § 53 of the Opinion.

[83] Also establishing this dialogue, Impicciatore, *La discriminazione*, cit., pp. 42-43.

[84] In the *Coleman* decision, this specific term does not appear; however, various similar expressions are employed, consistently viewing the mother as the person providing care to her son with a disability.

to cover not only the worker's children but also other persons under their care. With Directive (EU) 2019/1158, reconciliation rights are now held not only by parents (of children up to a certain age or with health conditions representing greater dependency) but also by those who assume the status of a caregiver – that is, those providing "personal care or support to a relative, or to a person who lives in the same household (...) and who is in need of significant care or support for a serious medical reason, as defined by each Member State" (Article 3(1)(d)). Furthermore, as Maneiro Vázquez[85] points out, while in precursor Directives the protective measures were based on the idea that workers were either working or absent while providing family care, those that stand out in the 2019 Directive reflect models for combining such care with professional life. Indeed, this instrument provides not only for the right to periods of absence – parental leave, carers' leave, time off from work on grounds of *force majeure* for urgent family reasons – but also for the use of flexible working arrangements (Article 9); that is, models suitable for enabling workers to adapt their working patterns, namely through the use of remote working arrangements, flexible working schedules, or a reduction in working hours (Article 3(1)(f)). Member States are thus obliged to provide reconciliation tools – these and/or others, provided they fulfil the described purpose – aimed at working parents and also at caregivers.

It seems to us, however, that no violation of the Directive occurs if these reconciliation mechanisms, provided for in national legal systems, take the form of a specific set of tools – flexible time slots, part-time work, compressed hours, continuous workdays, remote work, etc. – with defined contours. In contrast, the obligation of reasonable accommodation, as a projection of the principle of equality and non-discrimination on grounds of disability, is characterized – and it could not be otherwise, given the diversity of situations falling under that concept – by its openness, indeterminacy, and inevitable case-by-case analysis. The obligation is configured as a general clause that will have as many manifestations or concretizations as there are nuances in the situation of need. It may happen that a given measure to adapt to the worker's needs is conceivable within the framework of reconciliation mechanisms, but also as a reflection of the obligation of

[85] *Cuidadores, igualdad y no discriminación y corresponsabilidad: la (r)evolución de los derechos de conciliación de la mano de la Directiva (UE) 2019/1158*, Editorial Bomarzo, 2023, pp. 25 ss.

reasonable accommodation. However, while in the context of the former, the legal system tends to offer only a circumscribed set of solutions, within the scope of the latter, there is an elasticity that is only limited by the parameter of disproportionate burden referred to in Article 5 of Directive 2000/78/EC. In this sense, a worker who provides care to a dependent whose condition qualifies as a disability holds a right to have the employer adjust their working conditions by adopting measures that, in essence, fulfil a reconciliation purpose, but which – because they simultaneously fall within the framework of disability protection and the inherent obligation of reasonable accommodation – may go beyond those that would be due to a different worker caring for a child or another dependent person who does not have a disability. The *Bervidi* judgment thus allows us to affirm that there are two distinct universes of reconciliation measures: one inhabited by workers who are parents or caregivers of dependents – dependents *per se*, without further epithet – and another where workers caring for dependents with a disability operate. In this second universe, the employer's obligation assumes a significant breadth, arising from the ductility characteristic of reasonable accommodation, which, in the first universe, will not generally exist (although, in the abstract, nothing prevents Member State legislators from designing reconciliation mechanisms applicable outside the domain of disability with the same degree of openness).

At the light of what has been said, one may conclude that there is yet another aspect in which the position of a worker providing assistance to someone with a disability and that of a parent or caregiver of a third party who does not present such a condition differ. Indeed, while in the former case the omission of proper accommodation measures is considered indirect discrimination on grounds of disability, in the latter, it is highly questionable whether discrimination can be affirmed at all, and the identification of the grounds on which it would rest is even more dubious. The point relates, of course, to the aforementioned doubts posed by Directive (EU) 2019/1158: nowhere in the normative part of the Directive is the violation of reconciliation rights – not even retaliation against their exercise – presented as a discriminatory act, whether grounded on sex or on reconciliation.

In this regard, Maneiro Vázquez[86] stresses that the CJEU had already

[86] *Cuidadores*, cit., pp. 49 ff. and 56 ff.

had the opportunity to establish the link between the exercise of reconciliation rights and the principle of non-discrimination on grounds of sex – and, specifically, to attempt to qualify disadvantageous conduct due to the exercise of those rights as discriminatory on that ground. According to the author, regarding the *Coleman* case, as an alternative to framing the problem within the scope of disability discrimination, it could have been viewed as sex discrimination; it could certainly have been concluded that acts of belittling resulting from the individual providing care to someone with the characteristics of the worker's son are likely to fall, in the great majority, upon female workers, those who almost always fulfil family care roles.

Now, it seems to us that, with the *Bervidi* decision, the CJEU may have deepened the cluster of doubts we have just enunciated. Given the specific contours of the situation, it was possible to appeal to disability as a discriminatory ground and, given that framework, the Court assumed that the omission of pertinent reasonable accommodation measures constituted indirect discrimination – in this case, of the worker caring for the person with a disability. But would the sense of the decision have been identical if the situation had been viewed through the lens of Directive (EU) 2019/1158 – *rectius*, if the child did not suffer from any condition qualifying as a disability and it were therefore unfeasible to frame the case within that domain? In a word: if the measures required of the employer were an expression not of the obligation of reasonable accommodation, as conceived by Article 5 of Directive (EU) 2000/78, but of the obligation to protect reconciliation under Directive (EU) 2019/1158, would their non-observance have been considered an (indirectly) discriminatory act? And if it were, based on what ground? Once again – symptomatically, as in the *Coleman* case –, the person who claimed the adoption of adjustment measures was female. But it is, evidently, plausible to think that the father could have been in the mother's place. Then, even if the omission of those adaptations was deemed as a discriminatory conduct, basing it on sex would represent a less obvious logical step, although – as Amparo Ballester Pastor highlights – the circumstance that, in a given case, the holder of reconciliation rights is male does not obliterate the fact that, historically, traditionally, and predominantly, the lack of protection for this legal interest primarily harms women.

3.3. *Developments at national level*

In the absence of guidance or a clear direction at the supranational level, the failure to grant conciliation rights has given rise to widely diversified frameworks among Member States[87], as exemplified by the Portuguese, Spanish, and Italian cases.

3.3.1. *The Portuguese case*

Until 2019, the exercise of rights related to parenthood and/or work-life balance was not expressly included in the Portuguese Labour Code as a protected risk category for the purposes of anti-discrimination law. The list of discriminatory factors, contained in Articles 24(1) and 25(1), did not include an express reference to pregnancy, maternity, or, more broadly, parenthood or work-life balance – as, indeed, it still does not. It is true that this is a non-exhaustive, illustrative list (using the term "grounds such as"), which allows for the classification of treatments as discriminatory based on other illegitimate grounds. The same applies to Article 13(2) of the Portuguese Constitution, which contains a prohibition of discrimination based on an open – rather than exhaustive – list of grounds[88]. This approach gives judges some discretion to extend the list according to a set of judicially generated principles, and, as such, allows for the consideration of atypical causes or categories of discrimination.

However, the 2019 reform (Law No. 90/2019, of 4 September) introduced changes, specifically the new Article 35-A of the Portuguese Labour Code. Under this provision, any form of discrimination based on the workers' exercise of 'maternity and paternity rights' is prohibited. It expressly rec-

[87] According to the report *The transposition of the Work-Life Balance Directive in EU Member States (II): Considerable work to be done*, based on data provided by Member States in 2023, it is noted that seventeen of them fully comply with the provisions of art. 11 of the Directive, although the specific modalities of such compliance remain unspecified. Nonetheless, the Report observes that within the group of countries failing to grant the protection envisaged in the aforementioned provision – due to a lack of specific safeguards for workers who have requested or exercised the relevant reconciliation rights –, some maintained that such protection was ensured provided a nexus could be established between the unfavourable treatment and other discriminatory factors, such as sex or family status, etc.

[88] See, Canotilho, Moreira, *Constituição da República Portuguesa Anotada*, Coimbra Editora, 2014, p. 340; Miranda, Medeiros, *Constituição Portuguesa Anotada,* I , Coimbra Editora, 2005, p. 112.

ognises as a form of such discrimination differences in remuneration related to the awarding of attendance and productivity bonuses, as well as adverse effects regarding career progression.

Two aspects of the current Portuguese regulatory framework should be underlined.

Regarding the scope of protection, the provision in question prohibits any form of discrimination based on the workers' exercise of their *maternity and paternity rights*, rather than the exercise of *reconciliation* rights. However, these are not equivalent formulas, the former being arguably narrower than the latter. It encompasses all parental leaves and other rights of absence from work (absences and time off), as well as flexible work arrangements – such as part-time work and flexible hours, for reasons related to the fulfilment of parental responsibilities. Nevertheless, it appears that other rights provided within the framework of reconciling professional, family, and personal life, as well as rights established for carers, may fall outside the scope of that provision, unless extensively interpreted.

Secondly, considering the wording of the provision, it appears that the intention was to recognize the exercise of rights related to maternity and paternity as a new and autonomous factor of discrimination or risk, distinct from the sex/gender factor. This interpretation is supported by the systematic placement of the provision within the 'Parenthood' subsection, rather than, for example, the division pertaining to equality and non-discrimination based on sex.

Despite this legal basis for supporting the autonomy of exercising reconciliation rights as a discriminatory factor, certain ambiguities remain. On the one hand, the absence of this category from the list stipulated in Article 24 of the Portuguese Labour Code may be invoked as an argument against its autonomization – notwithstanding the fact that, as previously demonstrated, Article 24 adopts a non-exhaustive model. On the other hand, more recently, another provision of the Portuguese Labour Code – Article 25(6), following the reform introduced by Law 13/2023, of 3 April – extended the rule regarding the reversal of the burden of proof to any instance where a discriminatory practice is invoked on the grounds of the exercise of parental rights, other rights provided for within the scope of work-life balance, or the rights established for working carers. Despite this, Article 25(6)[89] does not expressly state that the exercise of

[89] For further developments on the amendments introduced by l. 3 April 2023 n. 13

reconciliation rights is an autonomous factor of discrimination, merely stipulating that discriminatory practices shall, in any event, benefit from the rule on the distribution of the burden of proof established, including instances where such practices have occurred by reason of the exercise of the work-life balance rights enumerated therein[90]. In short, it remains unsettled whether the exercise of reconciliation rights constitutes an independent discriminatory ground under current law.

3.3.2. *The Spanish case*

In Spain, until the entry into force of Royal Decree-Law 5/2023, of 28 June – a legislative act intended to transpose Directive 2019/1158 into the Spanish system[91] –, the matter was unclear at both the statutory and jurisprudential level. Organic Law 3/2007, of 22 March, merely stated that "rights to reconcile personal, family, and working life are recognised for male and female workers in a manner that promotes a balanced assumption of family responsibilities, avoiding all discrimination based on their exercise". This left the door open to the configuration of grounds for discrimination beyond

(*Agenda do Trabalho Digno*) to the Portuguese Labour Code for parenthood protection, see Gonçalves, *A proteção social da parentalidade*, in *Reforma da legislação laboral: trabalho digno, conciliação entre vida profissional e familiar*, APODIT 11, AAFDL, 2023, pp. 285-303; Carvalho, *A proteção da parentalidade e da conciliação no âmbito da designada Agenda do Trabalho Digno (Lei n.º 13/2023, de 3 de Abril)*, in *Reforma da legislação laboral: trabalho digno, conciliação entre vida profissional e familiar*, APODIT 11, AAFDL, 2023, pp. 193-216; Carvalho, *Reconciling professional and family life for promoting gender equality in Portugal: some considerations and prospects in the light of the new Directive 2019/1158 on work-life balance for parents and carers*, in *RDCTSS*, 4, 2020, pp. 97-1017; and Vicente, *A Directiva (UE) 2019/1158 do Parlamento Europeu e do Conselho, de 20 de Junho de 2019, relativa à conciliação entre a vida profissional e a vida familiar dos progenitores e cuidadores e o seu impacto no ordenamento jurídico nacional*, in *Reforma da legislação laboral: trabalho digno, conciliação entre a vida profissional e familiar*, APODIT 11, AAFDL, 2023, pp. 217-236.

[90] This ambiguity gives rise to judicial hesitancy. For instance, in the ruling of the App. Coimbra 12 January 2024 (available at www.dgsi.pt), the Court held that the differential treatment of a female worker for reasons linked to the exercise of maternity-related rights is to be classified as conduct amounting to sex-based discrimination. More recently, the same court, on 14 March 2025, ruled that the loss of an attendance bonus resulting from the exercise of the rights to nursing breaks or prenatal appointments constituted discrimination based on the exercise of parental rights.

[91] On the transposition of dir. 2019/1158/EU into the Spanish legal system, Cabeza Pereiro, *De la conciliación a la corresponsabilidad, en un viaje muy circunstancial*, in *RJT*, 2025, pp. 67-85. Regarding the state of affairs preceding the entry into force of the Royal Decree-Law 5/2023, Castro Arguelles, *Conciliación*, cit., p. 89.

that of sex. Meanwhile, in the judicial sphere, litigation surrounding the exercise of reconciliation rights by male workers illustrated the difficulties of framing such rights within anti-discrimination law. In the leading judgment of the Constitutional Court No. 26/2011[92], of 14 March, the collective of judges held that the refusal of a worker's request for night shift assignment constituted discrimination on family grounds. Without further elaboration, the Court thus associated the exercise of reconciliation rights by men with a new cause of discrimination related to family circumstances under Article 14 of the Spanish Constitution, after rejecting the claim that the appellant had been a victim of sex-based discrimination. According to the Constitutional Court, the individual had not suffered direct discrimination on grounds of sex, as their sex had not influenced, either overtly or covertly, the refusal of the request for schedule adaptation. Nor was there indirect discrimination, despite the fact that the employer's refusal to recognise the right to schedule adaptation might ultimately disadvantage the mother of his child, because the worker could not claim indirect discrimination that he himself had not personally suffered. This focus on a new ground of discrimination was not without academic criticism, primarily because it disregarded the exhaustive nature of the list of discrimination factors provided for in Article 14 of the Spanish Constitution, which is based on particularly reprehensible grounds of discrimination socially constructed over time[93].

Subsequently, the Royal Decree-Law 5/2023 introduced a significant amendment to Article 4.2(c) of the *Estatuto de los Trabajadores*, setting forth that any unfavourable treatment given to women or men for the "exercise of their rights to reconciliation or co-responsibility of family and work life" constitutes discrimination on grounds of sex. This incorporates, in the words of Castro Argüelles[94], a gender perspective into the anti-discriminatory protection of these rights, based on the close relationship that has always existed between equality, non-discrimination on grounds of sex, and the reconciliation of professional and family life. In the author's view, this option dispels any doubt regarding the constitutional dimension of work-life balance measures, whether used by male or female workers. However,

[92] Available at https://hj.tribunalconstitucional.es/es-ES/Resolucion/Show/6808.

[93] In this regard, Sanz de Galdeano, *La conciliación de la vida laboral y familiar como causa de discriminación por razón de género y la incentivación de las medidas de corresponsabilidad*, *Notícias CIELO,* 4, 2019, pp. 1-3.

[94] *Conciliación*, cit., p. 92.

it also appears to preclude the extension of anti-discriminatory protection to men outside the scope or channel provided by discrimination based on sex or gender.

Therefore, the extension of anti-discriminatory protection to men beyond the scope or channel provided by indirect discrimination on grounds of sex or gender is rejected – at least as long as reconciliation or shared responsibility does not have the same impact on the work of both women and men. According to this perspective, when a man suffers a detriment for having exercised reconciliation rights traditionally exercised by women, and which are associated with gender stereotypes, he is a victim of sex-based discrimination, 'since he would be discriminated against for assuming caregiving roles considered feminine'. From a systematic standpoint, this choice by the Spanish legislator has implications at two levels. On one hand, since discrimination for the exercise of reconciliation rights is framed as a form of sex-based discrimination – a factor provided for in Article 14 of the Spanish Constitution – there was no need to expand the constitutional list of suspect categories. On the other hand, given that the objective is not to broaden the grounds of discrimination, but rather to specify the situations that may constitute sex-based discrimination, Article 17 of *Estatuto de los Trabajadores*, concerning non-discrimination in labour relations, also remains unchanged[95].

3.3.3. *The Italian case*

Since 2010, Article 3 of Decree-Law 151/2001, of 26 March 2001 (*Testo unico delle disposizioni legislative in materia di tutela e sostegno della maternità e della paternità*), has prohibited any discrimination on grounds of sex, with particular reference to any less favourable treatment due to pregnancy, maternity, or paternity – including adoptive – or due to the entitlement to and exercise of the corresponding rights. Based on this provision, unfavourable treatment suffered either for reasons related to pregnancy, maternity, and paternity, or due to the exercise of rights related to these statuses, is prohibited. In either case, the practice is considered discriminatory on the grounds of sex. Concurrently, in a series of decisions, Italian courts had been qualifying certain employer organisational practices – namely regarding working

[95] *Ibidem*.

time arrangements – as indirect sex discrimination. By treating all workers indistinctly – both those caring for minor children and those without such responsibilities – these seemingly neutral practices were found to disadvantage employees with children (to a large extent, working mothers). This occurred in the case heard by the Court of Ferrara of 25 March 2019, concerning a worker employed by a large–scale retail company. Upon returning to work following maternity leave and extraordinary leave to care for her minor daughter with a disability, she was assigned to fragmented and night shifts, with the continuous allocation of so-called 'closing shifts'[96]. Reference should be also be made to the decision of the *Tribunale di Firenze* of 22 October 2019, in which the *Ispettorato Territoriale del Lavoro* was condemned for indirect sex discrimination for having established, in two service orders, particularly demanding penalties and procedural requirements for minor violations of the duty of punctuality by workers (for delays of up to fifteen minutes)[97].

Currently, Law No. 162/2021, of 5 November 2021, by adding a new paragraph 2-bis to Article 25 of the *Equal Opportunities Code (Codice delle Pari Opportunità)*, has disrupted – or at least introduced ambiguity into – the framework previously described. According to the aforementioned provision, 'It constitutes discrimination, within the meaning of this title, any treatment or modification of the organisation of working conditions and hours which, by reason of sex, chronological age, personal or family care needs, pregnancy, or maternity or paternity – including adoptive – or by reason of the entitlement to and exercise of the corresponding rights, places or may place the worker in at least one of the following conditions: a) a position of disadvantage relative to the generality of other workers; b) limitation of opportunities for participation in corporate life or deci-

[96] The Court underscored that "to treat a person in a position of hardship, who is doubly protected by the legal system – both on grounds of maternity and on grounds of the child's disability – identically to other workers in terms of working hours and shifts, constitutes indirect discrimination. This is because an employer's decision, which is ostensibly neutral and purportedly applies to all, places the female worker at a particular disadvantage... It is therefore held that the company's refusal to reach an agreement regarding work schedules is a manifestation of indirect discrimination; even if a schedule was accepted by the worker prior to the event – making it an apparently neutral act – it places the mother of a child with a disability in a particularly disadvantageous position in relation to [others]."

[97] Regarding this decision, see Izzi, *Discriminazioni verso i genitori e risarcimento dei danni in funzione sanzionatoria*, in *RIDL*, 2, 2020, pp. 665-672.

sion-making; c) limitation of access to mechanisms for career advancement and progression.' Comparing the referred provision, there are two perspectives through which an expansion or extension of risk factors or categories may be established[98].

First, risk factors such as maternity and paternity – already protected under Decree-Law No. 151/2001, of 26 March 2001, within the framework of sex-based discrimination – now appear listed in the new Article 25 (2) (bis), without a specific link to sex[99]. This effectively raises the question of whether the legislator intended precisely to grant parenthood autonomy as a factor independent of gender[100]. As Marco Peruzzi[101] observes, this inter-

[98] This was not the sole amendment introduced to art. 25 of the *Equal Opportunities Code* by l. n. 162/2021. Paragraphs 1 and 2 of the aforementioned provision also underwent modifications, although legal doctrine has generally characterised such additions as redundant or merely clarificatory. Regarding art. 25, it was explicitly established that anti-discriminatory protection extends to the recruitment and selection phase. For its part, paragraph 2 now stipulates that organisational changes affecting working hours may give rise to instances of indirect discrimination. On the limited substantive nature of these amendments, see Garofalo, *Il problematico allargamento della nozione di discriminazione nel codice delle pari opportunità*, in *LDE*, 1, 2023, pp. 1-11.

[99] A further ambiguity in art. 25 co. 2 bis stems from its allusion to protected characteristics – notably sex and age – which are already subsumed under existing statutory frameworks. Highlighting this inconsistency, Voza, *Eguaglianza e discriminazione nel Diritto del Lavoro. Un profilo teorico* (at https://aidlass.it/wp-content/uploads/2024/05/Relazione-VOZA.pdf); and Borelli, *Sguardi sul diritto antodiscriminatorio e sulle recenti politiche di genere*, in *LD*, 36, 3, 2022, pp. 502-507. Borelli further contends that jurisprudence is unlikely to accord significant weight to this legislative shift. Instead, it is anticipated that courts will persist in invoking art. 25, co. 1 and 2, d.lgs. 11 April 2006 n. 198 for sex-based discrimination, and d.lgs. 9 July 2003 n. 216 for age-based grievances. By the same token, regarding disability-based discrimination, it is plausible that the judiciary will favour specific legislation […] over the prohibition predicated on personal care needs.

[100] In this sense, Peruzzi, *Orario di lavoro e discriminazione per genitorialità: la soluzione giurisprudenziale prima della L N. 162/2021*, in *RIDL*, 2022, II, p. 267. Other scholars, however, contend that the statutory protection of parenthood is currently predicated upon two distinct factors: sex and family caregiving requirements. See Garofalo, *Il problematico allargamento della nozione di discriminazione,* cit., p. 7.

[101] Peruzzi, *Orario di Lavoro*, cit. The author relates to Trib. Bologna 31 December 2021, that qualified as discriminatory a company practice that imposed a new two-shift work schedule on its employees, particularly female workers with minor children, and ordered the employer to pay compensation for both pecuniary and non-pecuniary damages. The Author observes that certain passages of the ruling provide a genuine qualification of the conduct as discrimination on grounds of parenthood. Conversely, in other instances, the legal construction of the case appears to be merely borrowed from the gender-based definition. More recently, however, attention should be drawn to App. Firenze 25 February 2025. In a dispute with similar

pretative perspective allows for the verification of discrimination related to childcare responsibilities – such as those occurring, for example, when the distribution of productivity bonuses is based on attendance criteria – to be freed from the requirement of proving a differentiated impact to the detriment of women, including through statistical evidence. When parenthood becomes the risk factor, the disparity must be considered discriminatory, not so much because women are the vast majority of those suffering it, but because those subject to such treatment are working parents with parental responsibilities. According to the author, the necessity of this interpretation becomes even more evident in the context of same-sex couples, where the protection of a parent exercising leave to care for children can also entirely transcend the issue of gender difference, potentially linking to the issue of discrimination based on sexual orientation. Furthermore, in the author's view, the fact that the instrument's scope is equal treatment between men and women does not preclude this conclusion[102].

Irrespective of this point, evidence suggests that the provision in question intended to go further – that is, beyond the protection of parenthood – by referring to the category of *family care needs*. This is a provision that essentially aims to promote a broader and more modern conception of the balance between personal and professional life, in harmony with Directive (EU) 2019/1158. Through this Directive, the European legislator demonstrates a rupture with the inexorable link between reconciliation and parenthood, extending it to other dimensions of care[103]. For some authors, this reference is highly significant, as it reveals the intention to codify a new criterion to identify a social group considered, in the current context, in need of protection. Since the new rule represses disparities based on one's status as a career, in the future, there will no longer be obstacles to characterising such differences in treatment as (direct or indirect) discrimination

characteristics, this court recognises parenthood as an autonomous risk factor independent of gender, in line with the normative development of art. 2-bis of the *Equal Opportunities Code*. On this latter decision, see Lamberti, *Genitorialità e orario di lavoro nella prospettiva della discriminazione indiretta: autonomia della fattispecie, tutela collettiva e funzione dissuasiva del risarcimento*, in *EQUAL*, 5, 2025, p. 451.

[102] Peruzzi, *Orario di Lavoro*, cit., p. 268.

[103] According to Garofalo (*Il problematico allargamento della nozione di discriminazione*, cit., p. 7), included among family caregiving needs are not only all forms of leave granted under the work-life balance directive but also, more generally, requests for flexible working schedules for care-related reasons that do not stem from the exercise of a specific legal right.

based on this factor. Consequently, it will no longer be necessary, as has been the case until now, to resort to the prohibition of indirect sex-based discrimination[104].

4. *Work-life balance rights: towards an autonomous protected characteristic?*

The analysis undertaken in the preceding sections underscores the hesitations and complexities experienced at both the EU and Member State level, regarding the legal framework for the less favourable treatment of workers arising from the exercise of reconciliation rights. We now seek to reflect upon the merit of establishing the exercise of these rights as an autonomous ground of discrimination, independent of sex.

It should be noted that this reflection does not intend to challenge the settled classification of certain disadvantageous treatments as sex-based discrimination. Regarding the less favourable treatment of a woman resulting from the exercise of *first-generation* reconciliation measures – specifically maternity-reconciliation, which pertains exclusively to women to protect their biological condition – such treatment must fundamentally be categorised as sex discrimination. Indeed, as these measures are inseparable from the female sex, any less favourable treatment in this context inexorably results in a detriment to women. The central question, however, is whether other forms of disadvantageous treatment – notably those related to *second-generation* reconciliation measures – attain the normative status required for establishment as an autonomous ground of discrimination.

Indeed, it is argued that there are compelling grounds to classify unfavourable treatment arising from reconciliation needs as a form of sex-based discrimination. Proponents of this view contend that decoupling reconciliation frameworks from the principle of sex-based non-discrimination represents an attempt to obscure the historical evolution and current state of gender relations[105]. The theoretical frameworks surrounding the sex factor are multifaceted. The most salient construction involves framing unfavourable

[104] De Castro, *Discriminazione diretta e indiretta: una distinzione da ripensare?*, in *LD*, 36, 3, 2022, pp. 507-512. In the Author's view, the introduction of this category, alongside existing ones such as pregnancy and childcare for minors, will prove problematic; in the case of caregiving status, it is particularly challenging to identify a gender-linked characteristic.

[105] Cabeza Pereiro, *La directiva*, cit., p. 78, and Cristóbal Roncero, *La conciliación*, cit., pp. 92-93.

treatment for reconciliation reasons as indirect sex discrimination, given that statistical evidence demonstrates that caregiving duties remain predominantly female-dominated; thus, its classification as sex discrimination stems from the disproportionate female assumption of these tasks[106]. Others go further, positing that such instances may constitute direct sex discrimination, as unfavourable treatment – regardless of whether it affects women or men – serves to reinforce entrenched gender stereotypes[2]. It is further argued that the male gender of the victim should not be viewed as an insurmountable barrier to this classification, particularly since the CJEU, in *Roca Álvarez*, recognised direct sex discrimination in reconciliation matters even where the victim was a man (notwithstanding that the case specifically concerned the deprivation of rights rather than their exercise). Finally, some scholars contemplate the recourse to discrimination by association[107], applicable when an unequivocal nexus exists between the caregiver suffering the detriment and a third party who is the primary subject of the discriminatory ground.

The fact remains that, despite the umbilical connection between reconciliation and the female sex inherent in this framework, further data must be scrutinized. It is pertinent to examine the merits of establishing work-life reconciliation as an autonomous ground of discrimination, independent of sex. Three principal justifications are advanced for this approach.

Firstly, the evolution of the reconciliation policies. Recent decades have witnessed a significant evolution in reconciliation policies. These have shifted from targeting only pregnant workers, or those who have recently given birth or are breastfeeding, to encompassing all working parents – both men and women – and, subsequently, workers with family responsibilities in their capacity as carers. While achieving equal opportunities for men and women in the labour market remains a pressing concern of reconciliation policies – an objective that is still far from being realized – it is no longer their sole impetus. Reconciliation policies, and the measures they comprise, also aim, independently of that primary effect, to protect the male worker by enabling him to balance his professional life with his family life.

Viewed through this prism, one must ask whether the less favourable

[106] Cabeza Pereiro, *La directiva*, cit., p. 77.

[107] Sanz de Galdeano, *La perspectiva de género en la interpretación judicial: entre un necesario replanteamiento del alcance de la corresponsabilidad y una contención de la doctrina del varón discriminado*, in *ELRLPS*, 19, 2025, pp. 45-66.

treatment of a worker (male or female) resulting from the exercise of reconciliation rights should continue to be viewed as being based on sex, or whether it can, and should, be detached from this factor, thereby becoming autonomous. Should we continue to assume that when a man is the victim of disadvantageous treatment following the exercise of reconciliation rights, it is because he is performing typically female tasks, and that this is the true rationale for his unfavourable treatment? Moreover, even when the victim is a woman, given the evolution of reconciliation policies, does it not make sense to consider that if she suffers unfavourable treatment for exercising reconciliation rights, the factor governing such differential treatment is the exercise of those very rights? This is without prejudice to the possibility, in certain cases, of envisaging a scenario where the unfavourable treatment of a woman, associated with the exercise of a reconciliation right, may be based on more than one discriminatory factor – namely, sex and the exercise of reconciliation rights[108].

Secondly, the benefit of clarity. Relying on 'indirect sex discrimination requires complex statistical evidence to prove a disproportionate impact on women. But what happens when the victim is a man? Or a member of a same-sex couple? Or a carer for an elderly relative? Establishing an autonomous ground simplifies the legal framework. without the need for a gender *proxy*. Article 21 of the RFREU could provide the necessary legal basis for this construction, especially when read in conjunction with Article 11 of the Directive.

Finally, it could, indeed, be questioned whether the category whose autonomisation is discussed herein possesses the essential attributes for recognition as a prohibited or inadmissible ground of discrimination. In fact, the introduction of any new *suspect category* – whether this individualisation or categorisation is a legislative choice or rather the result of jurisprudential work – will always confront the legal scholar with a more general question:

[108] Raising the issue of multiple or intersectional discrimination, and positing the possibility of discrimination based on several factors in situations of adverse treatment arising from the exercise of reconciliation rights, albeit from a distinct perspective (combining discrimination based on reconciliation with sex-based discrimination by association), see Fernández Prieto, *Conciliación de responsabilidades de progenitores*, cit., pp. 117-119. See also Xenidis, *From Critical Theory to Litigation Strategy: Can Intersectionality Transform EU Equality Law?*, in *EULJ*, 1-2, 31, 2025, pp. 22-44, and, albeit focusing on remuneration issues, Izzi, *Intersectional discrimination under EU Directive 2023/970 and beyond: challenges and new perspectives for European Equality Law*, in this journal, 2025, 1, pp. 383-412.

namely, that of the requirements or necessary conditions for the recognition of a category as a prohibited/inadmissible factor of discrimination[109]. This is a crucial question, not only to ensure a coherent understanding of established discrimination factors but also to provide a theoretical framework capable of supporting the consolidation of new categories[110]. In the absence of a definitive and unified response within the doctrinal and jurisprudential landscape, various factors have been proposed to delineate a protected group, such as the immutability of the characteristic (either innate or constructed)[111], political marginalisation[112], dignity[113], the social relevance of the characteristic[114], or even a history of disadvantage[115]. Regarding conciliation rights, at first glance, some of these attributes might raise doubts regarding the validity of a category such as the one under discussion. Consider, for instance, the concept of history of disadvantage. Nevertheless, the particularity lies in the fact that we are not truly facing a new factor, but rather a process of autonomising a personal characteristic that until now was embedded within another: sex. If we separate discrimination based on the exercise of reconciliation rights from sex-based discrimination, we are merely extracting from the *sex capsule*[116] a long-recognized factor of discrimination, which

[109] Fredman, *Discrimination Law*, cit., p. 205.

[110] Foran, *Grounding unlawful discrimination*, in *Legal Theory,* 28, 2022, pp. 3-34.

[111] According to this view, the pivotal element lies in the immutability of the personal characteristic – specifically, the fact that it constitutes an innate personal trait that the individual cannot alter (strict immutability) or which they should not be required to relinquish, being rooted in fundamental choices (constructed immutability) or integral to their core identity. The doctrine of immutability was fundamentally refined within the American legal landscape, where jurisprudence functions through a non-exhaustive catalogue of protected grounds. Over the past quarter-century, however, this conceptual framework has been subject to persistent scrutiny regarding its efficacy in delineating why specific personal traits warrant legal protection while others are excluded. Most notably, the concept has been impugned for being simultaneously "overinclusive and underinclusive", Clarke, *Against Immutability*, in *YLJ*, 125, 2015, pp. 1-102.

[112] In U.S. case law, this element has been employed to exempt certain characteristics, such as age, from the most rigorous level of scrutiny under anti-discrimination law. See, on this point, Sandra Fredman, *Discrimination Law,* cit., p. 213.

[113] Freedman, *Discrimination Law*, cit., p. 214. Regarding this criterion within the jurisprudence of the European Court of Human Rights, Lopes, *A jurisprudência do Tribunal Europeu dos Direitos do Homem vista à luz do princípio da não discriminação*, in *Julgar*, 14, 2011, pp. 47-75.

[114] Foran, *Grounding unlawful discrimination*, cit., pp. 11 ss.

[115] Concerning the doctrinal weight of this criterion in Anglo-American case law, see Freedman, *Discrimination Law*, cit., p. 217.

[116] Focusing on this idea, Vicente, Gonçalves, *O exercício de direitos de conciliação como*

until now was impregnated within it: the assumption of family responsibilities. And if this is the case, it is not difficult to conclude that we are, after all, facing a characteristic that historically exerts a negative impact on social interactions, insofar as it tends to express sentiments or attitudes fraught with inequality and, as such, warrants enhanced protection. In essence, recognizing reconciliation as an autonomous ground of discrimination does not mean challenging the established protection of gender equality. On the contrary, it completes it. It allows us to protect the *second generation* of rights through a system/framework that finally puts work life balance at its core.

(potencial) factor de discriminação, cit., p. 687.

Abstract

Over the last three decades, the European Union has established an increasingly complex framework regarding work-life balance. This evolution reflects a paradigmatic shift away from the traditional *maternity-protection model* towards a sophisticated system designed to foster an equitable distribution of caregiving responsibilities between men and women. Nevertheless, the status of work-life balance within anti-discrimination law remains uncertain. This paper explores the evolving legal status of work-life balance rights and their intersection with anti-discrimination law within the European Union framework. At a first level, by exploring this intersection with sex, as a ground of discrimination and, at a second level, with the category of disability. It also includes a study of legislative and jurisprudential developments in domestic systems – specifically the Portuguese, Spanish, and Italian models. Finally, the paper contends that the recognition of the exercise of reconciliation rights as an autonomous ground of discrimination is warranted, based upon a threefold argumentative framework.

Keywords

Work-life conciliation, Sex, Disability, Direct and indirect discrimination, Discrimination by association.

Paolo Orlando Ferrara, Giorgio Luigi Risso

Towards Fair and Inclusive Employment Relations: Business as an Agent of Social Change Through Corporate Social Responsibility, Integrated Corporate Welfare, and Workplace Safety at Work

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1. *Corporate Social Responsibility as an operational tool to address EDI challenges*

Corporate Social Responsibility today represents an operational paradigm through which organizations can concretely address the challeng-

es of Equality, Diversity, and Inclusion (EDI)[1]. Historically understood as a response to external pressures or compliance with regulatory standards, CSR has gradually evolved towards a more conscious and systemic vision of corporate responsibility, where businesses are no longer considered isolated economic entities, but rather significant players within a complex social ecosystem[2]. Contemporary businesses possess the capacity and, increasingly, the conscious responsibility to become active players in combating inequality and promoting inclusive work environments. This transformation can be interpreted as a strategic choice based on the awareness that structural inequalities – gender, ethnicity, age, disability, sexual orientation – represent not only a social justice issue, but also an economic inefficiency that leads to a loss of talent, reduced productivity, and weakened organizational resilience[3].

1.1. *The company as an agent of social change*

A company that deliberately invests in CSR policies transforms itself into a conscious agent of social change, capable of exerting a positive influence on the local area, the community, internal labor relations, and, more generally, society as a whole[4]. This transformation involves a profound reinterpretation of the traditional business model, where profit is no longer the sole guiding value, but rather one of how the company also pursues a social purpose.

From this perspective, CSR is a conceptual and operational framework through which organizations define their policies for promoting equality in the workplace and protecting rights[5]. These are not simply episodic actions or greenwashing communications, but rather systemic, measurable, and monitorable interventions over time, integrated into corporate governance and the organization's overall strategy[6].

[1] Freeman, *Strategic Management: A Stakeholder Approach*, Cambridge University Press, 2010.

[2] Porter, Kramer, *Creating Shared Value*, in *HBR*, 2011.

[3] Aa.Vv., *Diversity Wins: How Inclusion Matters*, McKinsey & Company Report, 2020.

[4] Donaldson, Preston, *The Stakeholder Theory of the Corporation: Concepts, Evidence, and Implications*, in *AMR*, 1995.

[5] Ballucchi, Furlotti, *La responsabilità sociale delle imprese. Un percorso verso lo sviluppo sostenibile. Profili di governance e accountability*, Giappichelli, 2024.

[6] Visser, *The Age of Responsibility: CSR 2.0 and the New DNA of Business*, John Wiley &

1.2. *The role of the company's employee stakeholder*

A central element in the contemporary redefinition of CSR is the recognition of the employee not just as a productive resource, but as a primary stakeholder in the organization. Stakeholder Theory suggests that a company's lasting success depends on its ability to create value not only for capital owners, but for a variety of stakeholders, including employees, suppliers, customers, local communities, and the environment[7]. In this framework, employees represent a primary stakeholder not only because they are contractually obligated to receive a salary, but also because they are the custodians of fundamental rights: the right to safe and dignified working conditions, the right to non-discrimination, the right to reconcile work and personal responsibilities, the right to professional and personal development, and the right to respect for their dignity and uniqueness. Considering the employee as a central stakeholder means that company policies can be designed and implemented with the informed participation of workers themselves, through constructive dialogue.

2. *Integrated corporate welfare as a tool for equality and inclusion*

Corporate welfare can be defined as an integrated, multidimensional system of services, benefits, and policies designed to support work-life balance, promote gender equality, facilitate shared and equal parenting, and ensure the inclusion of all workers[8]. It's not just a heterogeneous collection of financial benefits (meal vouchers, supplemental insurance, vouchers), but a holistic approach to employee well-being that recognizes the different dimensions of human life and the need for integration between work and personal life.

The integrated corporate welfare system operates on multiple levels.

Sons, 2011.

[7] Mitchell, Agle, Wood, *Toward a Theory of Stakeholder Identification and Salience: Defining the Principle of Who and What Really Counts*, in *AMR*, 1997.

[8] Treu, *Welfare aziendale. Welfare territoriale e multi-employer, post-pandemia e smart-working*, Wolters Kluwer, 2023.

First, it recognizes how workers' quality of life outside of the production environment directly influences their ability to contribute effectively to their work. It also makes organizations aware that attracting and retaining top talent depends not only on monetary compensation, but also on opportunities for personal and professional development, the quality of the work environment, trust in leadership, and the recognition of human dignity within the organization.

2.1. *Integrated welfare as a response to demographic and social challenges*

Integrated welfare represents a concrete and informed response to the contemporary demographic and social challenges facing European and Italian societies. The aging population, the structural decline in birth rates, the increasing complexity of care responsibilities (elderly care, childcare, and assistance for family members with disabilities), and the evolution of family structures (single-parent families, same-sex couples, and blended families) require companies to profoundly rethink their employee support systems[9].

In Italy, despite legislative progress in recent decades, a significant gender gap persists in terms of labor market participation, access to managerial positions, and, above all, reconciling professional and family responsibilities.

The female employment rate in Italy remains among the lowest in the European Union, standing at around 52%, while the burden of domestic and care work still falls overwhelmingly on women. In this context, tools such as paternity leave, care services, flexible working hours, structured smart working, and healthcare support are not simply corporate benefits, but strategic tools that redefine gender norms in the workplace and promote a more equitable distribution of care responsibilities.

[9] Rizza, Bonvicini, *Attori e territori del welfare. Innovazioni nel welfare aziendale e nelle politiche di contrasto all'impoverimento*, FrancoAngeli, 2014.

2.2. *Integrated welfare and gender equality*

The implementation of targeted welfare policies represents a concrete operational tool for reducing the gender gap and promoting real equal opportunities in the workplace[10]. Several significant interventions stand out:

- Shared and equal parenting: Equal leave policies (extended paternity leave, equal pay for men and women during leave) that implement traditional gender norms that assign fathers a secondary role in childcare.
- Work flexibility: Smart working, flexible hours, and the ability to temporarily reduce working hours for caregiving responsibilities allow for a more equitable distribution of work and family life, particularly benefiting women, who traditionally bear the brunt of domestic and care work.
- Care Services: Company-based daycare, eldercare, and home support services are mechanisms 'through' which companies share responsibility for ensuring their employees can effectively balance their professional and family responsibilities.
- Pay equity: Explicit pay auditing policies, transparent pay grades, and regular pay review mechanisms are essential to ensure that historical pay gaps based on gender stereotypes are not perpetuated.

3. *Case studies: the historical and contemporary system of corporate welfare*

The Italian tradition of corporate welfare has its roots in the past, characterized by enlightened entrepreneurs who, already between the 19th and 20th centuries, recognized the inseparable link between workers' well-being and that of the company. Although sometimes characterized by a paternalistic dimension, these pioneering experiences represent the foundation upon which modern awareness of corporate social responsibility is built.

3.1. *Olivetti: The Humanist Model of Corporate Welfare*

Adriano Olivetti's story represents a turning point in the modern concept of corporate welfare[11]. When Adriano Olivetti took over his father's

[10] OECD, *The Pursuit of Gender Equality: An Uphill Battle*, OECD Publishing, 2019.

[11] Olivetti S.p.A. is an Italian company operating in the information technology sector,

factory in Ivrea in 1932, it was not yet "corporate welfare" in the contemporary sense of the term; however, his deeply humanistic nature – despite his rigorously technical training in chemical engineering – led him to care for his employees not only as professionals, but as individuals, with a dignity that transcended the simple employment relationship. Adriano Olivetti was not just an entrepreneur, but a visionary who combined industrial skill, social sensitivity, and humanistic vision in a way that was entirely unique in the business landscape of the time. Driven by an awareness of the times and the need to combine industrial development with the affirmation of human rights, Adriano Olivetti revolutionized the business model, transforming the workplace into a place of cultural and personal enrichment[12].

The "Olivetti recipe" for a "human-scale" company was based on principles that are still extraordinarily contemporary today. Starting from his statement, "the factory cannot focus solely on profitability. It must distribute wealth, culture, services, and democracy. I think the factory is for people, not people for the factory", it can be said that his vision represented a Copernican revolution compared to the forms of capitalism of the time and a reversal of the traditional industrial paradigm. Not man at the service of the factory, but the factory at the service of man and his personal and social fulfillment[13].

Another fundamental element was the integration between work and culture, in the firm belief that work should be enriched by cultural content and that industry should contribute to the cultural elevation of society. Alongside this element is the presence of the factor of industrial democracy, through the promotion of worker participation in company decisions, the creation of a collaborative climate and the overcoming of the traditional division between capital and labor.

The welfare system provided, in an innovative way:

- Access to culture and education: Olivetti established company libraries accessible to all employees, including blue-collar workers. Cultural events and educational initiatives were not merely a marginal benefit, but a fundamental right of workers, an expression of Olivetti's belief that the elevation of humanity was the goal of industry.

which in the past was one of the most important companies in the world in the fields of typewriters, calculators and electronics.

[12] Ochetto, *Adriano Olivetti. La biografia*, Edizioni Comunità, 2013.

[13] Campanini, *Adriano Olivetti: il sogno di un capitalismo dal volto umano*, Studium, 2020.

- An integrated system of services: housing (in a logic that valued modern architecture and quality of life), nurseries, quality canteens, medical clinics, social assistance services, all elements of a system to support the well-being of workers and their families.

Furthermore, the concept of profit as a tool for integral innovation is emphasized. Olivetti's vision of profit was not as an end, but rather as a tool for creating a "virtuous chain aimed at the common good". Profit, from this perspective, was intended to fuel ongoing investments in worker well-being, technological research, and responsibility toward the local community.

Even today, the Olivetti model offers concrete inspiration to companies seeking to combine economic success with a positive social impact on employees and the local community.

3.2. *Marzotto: Paternalistic Welfare and the Construction of the "City of Harmony"*

Gaetano Marzotto represents another emblematic figure in the history of Italian corporate welfare[14]. He invested significant financial resources in the construction of an urban complex that ultimately included over a thousand housing units for various employee categories – apartments, townhouses, and single-family homes – as well as a wide range of welfare and recreational facilities. This experience culminated in the creation of the "Social City" or "City of Harmony" in Valdagno, built between 1928 and 1937. The "Social City" was created to integrate the working life of the factory with the social, recreational, and cultural life of its employees and the community.

Marzotto's welfare interventions were structured around some fundamental areas:

- Residential housing: the construction of housing for employees, organized according to a social hierarchy that reflected organizational status (stately homes for managers, middle-class homes for employees, and public housing for workers).
- Service system: Marzotto implemented a widespread system of ser-

[14] Marzotto S.p.A. is an Italian textile group headquartered in Valdagno, in the province of Vicenza. It is a leading textile company in Italy in terms of turnover, employees, and international expansion.

vices for employees, including schools (a school complex with elementary, middle, and high schools, and a technical and industrial institute), sports and recreational facilities (a swimming pool and sports facilities), social institutions (a nursery school, a kindergarten, and a retirement home), and cultural institutions (a theater, a music school, and a company afterwork club). The company also established a corporate health service, which provided medical care with a team of specialists in various areas of care, and mountain and sea summer camps for employees' children.

- Mobilizing corporate culture: after-work initiatives, community organizations, and professional groups represented channels through which the company's name was amplified throughout the community, creating a connection between the company's image and the well-being of the local community.

The Marzotto experience represents a significant contribution to the awareness that worker well-being is not a cost to be minimized, but rather a strategic investment in long-term corporate prosperity. The Social City exemplifies a model of industrial humanism, in which the entrepreneur Gaetano Marzotto sought to offer services and facilities to improve the lives of his workers and their families. The experience is part of the European industrial paternalism of the 19th and 20th centuries, taking the form of a structured set of material, ideological, and political instruments that regulated labor relations. The factory became the center of an entire community, providing services to meet a wide range of citizens' needs, and working-class neighborhoods were conceived as an integral part of the city, not as industrial appendages.

3.3. *Pirelli: The institutionalization of welfare as a tool for corporate cohesion*

The history of welfare at Pirelli represents a particularly significant example of the progressive evolution from simple welfare to a more informed and institutionalized welfare system[15]. Giovanni Battista Pirelli, founder of the company in 1872, had an extraordinary vision of the role of business in promoting worker well-being. Pirelli expressed a profound awareness of the need to create bonds of belonging and a sense of community that

[15] Pirelli & C. S.p.A. (Pirelli) is a multinational corporation headquartered in Italy, operating in the automotive sector as a manufacturer of tires for cars, motorcycles, and bicycles.

transcended mere work performance. Throughout its long history, Pirelli[16] has developed an integrated welfare model that has progressively evolved through the following phases:

- Initial phase (1872-1900) – Mutualism and welfare: two important recognitions, namely the foundation of the Mutual Aid Fund in 1877 for sick workers and the Concordat between the company and the Workers' Commission in 1902 aimed at guaranteeing better working conditions, which represent the first formal instruments through which Pirelli recognizes the need to guarantee social protection to workers in the event of illness and economic difficulty.
- Intermediate phase (1900-1970) – Institutionalization and integration: the creation of the Dopolavoro Aziendale Pirelli (Pirelli Company after-work club), the founding of the Pirelli Foundation, and the transformation of welfare institutions into autonomous structures represent a process of progressive welfare institutionalization. The company established permanent structures, managed independently from the production organization, through which it ensured systematic coverage of employees' well-being needs.
- Contemporary phase (1970-present) – Integrated welfare and inclusiveness: in recent times, Pirelli has consolidated its integrated welfare model which is based on three strategic pillars that represent best practice in the Italian industrial landscape.

The first pillar focuses on individual well-being ("For You"), offering inclusive work environments, work-life integration support with up to eight days of remote work per month, supplementary healthcare plans, and supplementary pension plans. The second pillar focuses on family support ("For Your Family"), with specific initiatives for shared parenting, caregiver support, and educational programs for employees' children. The in-house clinic and supplementary health fund provide advanced healthcare, while courses for new parents and psychological counseling support family transitions. The third pillar extends to the community ("For the Community"), through corporate volunteering programs and educational, environmental, and cultural projects. These programs also involved 100% of raw material suppliers in business and human rights training, extending ethical commitments along the entire value chain.

[16] Https://corporate.pirelli.com.

3.4. *Contemporary Case Studies: Strategic Integration of Welfare and Gender Equality. Barilla: From equal pay to systemic inclusion*[17]

The Barilla Group[18] represents a contemporary example of how the strategic integration of corporate welfare and commitment to gender equality can generate significant corporate cultural transformation. Some points worth highlighting[19]:

- Gender Pay Equality (2020): in 2020, the Group achieved gender pay equality for all employees worldwide, eliminating all unjustified pay gaps. This represents an ambitious goal that requires a multi-year programmatic commitment to salary auditing, transparent pay grades, and regular pay reviews.
- Gender Equality in Leadership: 38% of Barilla executives and managers worldwide are women, while 47% of female employees report directly to the Global Leadership Team.
- Global equal leave policy: in 2023, Barilla introduced a new global paternity and maternity leave policy that guarantees all parents a minimum of 12 weeks of fully paid leave, regardless of gender, marital status, or sexual orientation.
- Partnerships with advocacy organizations: in March 2024, Barilla partnered with LEAD Network (Leading Executives Advancing Diversity), extending its commitment to gender equality beyond company boundaries to suppliers and supply chain partners.
- International recognition: in 2021, Barilla was the first Italian company to win the Catalyst Award for initiatives accelerating the advancement of women in the workplace. In 2022, it ranked third among food companies in the European Diversity Leaders survey promoted by the Financial Times.

On the topic of Diversity and Inclusion, Barilla has established the Global Diversity and Inclusion Board with the appointment of a Chief Diversity Officer. Barilla has developed relationships with external organizations and the third sector to promote awareness and inclusion processes.

Interventions have been developed for suppliers, positive actions have

[17] Barilla G. e R. Fratelli S.p.A., known as Barilla, is an Italian multinational food company, operating in the markets of dry pasta, ready-made sauces, baked goods, flour, and bread.

[18] Barilla G. e R. Fratelli S.p.A., known as Barilla, is an Italian multinational food company, operating in the markets of dry pasta, ready-made sauces, baked goods, flour, and bread.

[19] Https://www.barillagroup.com.

been promoted towards refugees, disabled people, and the LGBTQ+ community, representation and inclusion initiatives for people of different ethnic origins have been promoted to combat inequalities, and significant interventions for gender equality have been implemented.

3.5. *Lavazza: welfare as community building*

The Lavazza Group[20] (Luigi Lavazza S.p.A.) has developed an approach to corporate welfare that particularly emphasizes building a sense of community and promoting shared parenting.

The recent supplementary agreements (four-year period 2020-2023, renewed in 2024) highlight:

- Innovative flexible work: the "Short Friday" system (reducing the Friday workday to 4 hours compensated with increased performance on other days) represents a creative approach to reconciling the needs of organizational flexibility and work-life balance.
- Inclusive parenting: extension of paternity leave (5 additional paid days in addition to the 10 required by law), recognition of leave for de facto couples and same-sex couples, and baby bonuses for births or adoptions represent an inclusive approach to parenting that recognizes the plurality of contemporary family configurations.
- Caregiving and family leave: granting 8 hours of paid leave per year to accompany family members to medical appointments, extension to pet care (4 hours per year), in recognition of the multiplicity of care responsibilities that characterize contemporary life. Lavazza has also implemented several development programs connected to the employee well-being system and social inclusion policies: Lavazza has adopted a Gap Free program (launched in 2020) of cultural transformation to promote equal opportunities and enhance diversity. A structured, medium- to long-term process to eliminate all barriers and grow an organization free of any form of discrimination.

Some examples of interventions:

- Global D&I Week;
- Employee Resource Groups;

[20] Lavazza – officially Luigi Lavazza S.p.A. – is an Italian roasted coffee company founded in 1895 in Turin by Luigi Lavazza.

- Inclusive Leadership Training per management;
- Social inclusion programs.

Through its Welfare & Wellbeing strategy, Lavazza has developed a comprehensive framework for assessing employee well-being in Italy. Employee well-being is the result of a combination of different, closely related factors. The following factors have been highlighted: physical well-being, emotional well-being, social well-being, and financial well-being.

With respect to welfare policies, the following services are highlighted:

- Smart working and flexible hours;
- Wellness and health & safety programs;
- Company nursery and family services.

Furthermore, Lavazza has implemented compliance programs that protect the corporate community and business partners and strengthen stakeholders' trust in the operational and managerial correctness of the organization. In pursuing regulatory and ethical compliance objectives, promoting the culture of legality and proper conduct highlights:

- Code of Ethics;
- Anti-Harassment Policy;
- Anti-corruption, Policy zero tolerance;
- Supplier Code of Conduct for the entire supply chain;
- Protected and confidential Whistleblowing System.

3.6. *EssilorLuxottica: toward a multidimensional inclusive culture - The Employee Welfare System*

EssilorLuxottica has developed an integrated welfare system that goes well beyond the minimum wages, positioning itself as the employer of choice in the global industrial sector[21].

Luxottica's welfare system in Italy is a comprehensive corporate model, established in 2009 and managed in collaboration with the trade unions. It includes various initiatives to support employees and their families. A key element in the welfare implementation strategy is the territorial differen-

[21] EssilorLuxottica S.A. is an Italian-French multinational, founded in 2018 following the merger of the Italian company Luxottica and the French company Essilor. It is among the world's leading groups in the design, manufacture, and marketing of ophthalmic lenses, optical devices, and eyeglasses and sunglasses.

tiation of initiatives, designed based on the needs of the different sites, and which stems from the company's tradition of strong local roots.

Healthcare and Wellness

- Health Insurance: Coverage of supplemental healthcare costs.
- OneClick Wellness: Digital platform for prevention, health campaigns, and discounted rates.
- Counseling Services: Psychological and relationship support for employees and families.
- Financial Support Programs: Assistance with medical, educational, or elderly care expenses.

Financial Support and Purchasing

- "Shopping Basket": A package of non-monetary benefits to increase purchasing power.
- Textbook Vouchers/Reimbursements and Scholarships: Financial support for employees' children.

Flexibility and Working Hours

- Hour Bank: Greater flexibility in managing working hours.
- Paid Paternity Leave: Additional paid leave.
- Family Job Sharing: A family member can temporarily replace an employee to ensure financial continuity for the family unit.

Pension and Future

- Life Bonus: A €30,000.00 contribution to be paid to heirs in the event of the employee's death, even outside the workplace.
- Generational Pact: Agreement with INPS for the payment of voluntary contributions for participating employees.

Mobility and Local Support

- Collective Transportation Service: Experimental home-work transportation service to reduce worker inconvenience.
- Local Initiatives: Collaboration with local authorities to support services such as daycare centers and senior centers, extending the value of welfare to the local community.

The company, in relation to effective worker participation, has also implemented shareholding and ownership programs. In 2021, 67,000 employees in 85 countries became company shareholders through employee shareholding plans. In 2023, the number of employee shareholders grew to nearly 80,000, creating a strong sense of ownership and alignment of interests with corporate strategies.

In July 2021, EssilorLuxottica launched "Eyes on the Planet," the most ambitious corporate sustainability program in the optical industry, structured around five strategic pillars that encompass various areas and widespread interests.

1. Eyes on Carbon: Towards Carbon Neutrality, with the aim of combating climate change and achieving carbon neutrality.

2. Eyes on Circularity: Circular Economy, by applying the logic of the circular economy and transforming the linear "take-make-dispose" model into a circular "reduce-reuse-recycle" system, the primary objective is to develop sustainable innovation to improve materials, processes, products, and services.

3. Eyes on World Sight: Universal Right to Sight, this plan has the mission of eliminating, through the OneSight EssilorLuxottica Foundation, uncorrected vision by 2050. This is because sight is considered a fundamental human right.

4. Eyes on Ethics: Integrity Without Compromise, by adopting and adhering to ethical behavior (Code of Ethics, Code of Conduct for Business Partners, Human Rights Due Diligence) and applying the most rigorous ethical standards (Supply Chain 360°) along the entire value chain, with a focus on local impact, stakeholder engagement, and value creation.

5. Eyes on Inclusion: Diversity and Belonging, the inclusion pillar focuses on promoting diversity and inclusion in the workplace.

The global DE&I function has launched a series of global and local initiatives aimed at raising broad awareness, with a commitment to ensuring a fair, safe, and inclusive environment for individuals and communities. The company actively promotes respect for diversity and protects against any form of discrimination, intimidation, or harassment.

Specifically, with regard to the Diversity, Equity, and Inclusion (DE&I) Policy, some key elements stand out:

Multidimensionality of inclusion: the policy explicitly recognizes and addresses multiple dimensions of diversity: gender, sexual orientation and

gender identity, disability, age, ethnicity, religion, with specific actions for each dimension.

Gender equality and female leadership: adoption of fair hiring practices, equitable pay, equal career opportunities, support for work-life balance, and parental leave for all genders.

LGBTQIA+ Inclusion: recognizing the need to create a supportive environment for LGBTQIA+ employees, with explicit non-discrimination policies, extension of benefits to same-sex partners, and parental leave for LGBTQIA+ families.

Caregiving and parenthood: a shared family responsibility model that recognizes both traditional and alternative families, with concrete support for life transitions (parenthood, eldercare, gender transitions).

Accessibility and inclusion of people with disabilities: implementation of concrete measures to remove architectural and technological barriers, creation of fully accessible work environments.

Global Inclusion Committee: establish a permanent DE&I governance structure to act as a cultural change agent, review strategy, and ensure that inclusion programs are maintained over time as the foundation of organizational culture.

4. *Regulatory standards as a strategic framework: UNI/PdR 125:2022 and SA 8000. UNI/PdR 125:2022: Gender Equality Certification*

UNI/PdR 125:2022 represents a detailed operational standard that allows companies of all sizes – from SMEs to large enterprises – to define, measure, and certify their commitment to reducing gender inequalities[22].

Introduced by Law No. 162/2021, the certification represents not only an attestation tool, but also a structured framework through which companies can gradually evolve towards conscious gender equality. UNI/PdR 125:2022 is based on four key assessment areas, each of which represents a pillar of organizational gender equality:

- Organizational culture and strategies: assessment of widespread awareness of the importance of gender equality, the presence of explicit

[22] UNI, *UNI/PdR 125:2022 - Parità di Genere. Prassi di Riferimento*, Ente Italiano di Normazione, 2022.

strategies, internal communication on gender issues, and the organization's ability to prevent stereotypes and discrimination.

- Corporate governance: analysis of gender representation in decision-making positions, the composition of strategic committees, female participation in decision-making processes, and the presence of figures dedicated to managing gender equality.
- Human Resources Management: evaluation of recruitment, selection, and professional development policies, with particular attention to the presence of bias in performance evaluations, equal professional growth opportunities, and equal access to training and career paths.
- Pay equity: systematic salary auditing to ensure there are no unjustified pay gaps, analysis of the distribution of performance bonuses and incentives, and monitoring of pay trends over time.

By implementing specific and measurable key performance indicators (KPIs), companies can monitor their organization's level of maturity across all dimensions, identify areas for improvement, and plan systematic evolutionary interventions.

To obtain certification, an organization must achieve at least 60% of the expected score, demonstrating it has undertaken a structured and monitorable path towards gender equality. Certification is valid for two years, after which a renewal process with a full audit is required to confirm progress made.

It is important to emphasize that UNI/PdR 125:2022 explicitly incorporates dimensions such as equal access to career paths, reducing pay inequalities, equal management of parental responsibilities, and workplace inclusion. This multidimensionality reflects the scientific understanding that gender equality cannot be reduced to a single policy but requires systemic intervention that touches every aspect of organizational life.

4.1. *SA 8000: The international standard on social responsibility*

SA 8000 (Social Accountability 8000) is the international voluntary certification standard developed by Social Accountability International (SAI) and accredited by Social Accountability Accreditation Services (SAAS)[23]. Unlike UNI/PdR which focuses on gender equality, SA 8000

[23] SAI, *SA8000:2014 - Standard*, Social Accountability International, 2014.

adopts a broader perspective of social responsibility that embraces the integral protection of human rights in the workplace.

The standard is explicitly based on the principles of the United Nations Conventions on Human Rights, the Rights of the Child, and the Conventions of the International Labor Organization (ILO)[24]. Thus, SA 8000 represents a framework that directly integrates internationally recognized human rights principles into the company's operational context.

The standard defines stringent requirements in multiple areas:

- Prohibition of Forced and Child Labor: SA 8000 explicitly prohibits all forms of forced, compulsory, and slave labor, as well as any form of child exploitation. This is particularly relevant for organizations operating in international contexts or with complex supply chains.
- Freedom of Association and the Right to Collective Bargaining: the standard recognizes and promotes the right of workers to freely associate, form trade unions, and collectively negotiate their working conditions. This is a fundamental element of dignity at work.
- Non-discrimination: SA 8000 explicitly prohibits discrimination based on race, caste, national origin, religion, disability, gender, sexual orientation, trade union membership, or political affiliation. The prohibition of discrimination is a cornerstone of human rights protection in the workplace.
- Health and Safety: the standard requires organizations to ensure safe and healthy working conditions, with particular attention to industry-specific risks.
- Fair and Decent Wages: SA 8000 requires all workers to be paid a "living wage," which is sufficient to meet basic needs and provide disposable income.
- Reasonable Working Hours: the standard places limitations on excessive working hours, recognizing workers' right to rest and leisure.
- Prohibition of Abusive Disciplinary Practices: SA 8000 prohibits any form of corporal punishment, physical coercion, verbal threats, sexual abuse, or other forms of intimidation as a means of discipline in the workplace.

A particularly relevant element of SA 8000 for inclusion concerns the governance of social responsibility. The standard requires organizations to

[24] ILO, *Conventions and Recommendations on Core Labour Standards*, International Labour Organization, 2023.

establish collegial bodies that include a balanced representation of management and workers, including a health and safety committee and a social performance team[25]. This requirement recognizes that true change towards more equitable labour relations requires genuine worker participation and a voice in decision-making processes.

4.2. *Regulatory framework integration as a long-term strategic vision*

The integrated implementation of regulatory tools such as UNI/PdR 125:2022 and SA 8000 offers companies the opportunity to build a coherent, long-term strategic vision that combines Corporate Social Responsibility, corporate welfare, and a commitment to equality and inclusion.

These tools should not be interpreted as bureaucratic obligations to be formally fulfilled, but rather as concrete opportunities for organizational transformation and the creation of lasting value. Companies that consciously invest in certification and systematically align their commitments to social responsibility and gender equality demonstrate a profound awareness, resulting in the benefits of these choices manifesting over long horizons. The tangible benefits of this commitment include:

- Reduced turnover: inclusive and humane work environments generate greater engagement and a sense of belonging, significantly reducing voluntary turnover rates and saving on recruitment and onboarding costs.
- Talent Attraction: organizations with strong inclusion and EDI policies are viewed by younger generations as preferred employers, making it easier to attract talent.
- Improved reputation: certification and transparent communication of corporate social responsibility commitment significantly improve reputation perception among multiple stakeholders: customers, investors, the local community, and institutions.
- Organizational Resilience: diverse and inclusive organizations demonstrate greater adaptability, innovation, and creative response to complex challenges, generating significant competitive advantage.
- Ability to meet stakeholder expectations: contemporary stakeholders – from new generations of workers to institutional investors integrating

[25] SAI, *SA8000 Implementation Guide - Stakeholder Participation and Governance*, Social Accountability International, 2024.

ESG (Environmental, Social, and Governance) considerations into their investment criteria – increasingly demand that organizations demonstrate a genuine commitment to social sustainability.

5. *Safety at work as a system of measures for overcoming inequalities between workers: an historical overlook in Italy*

The economic history of Italy since the Industrial Revolution is a field of study which gives the chance to reflect upon social inequalities and political-institutional attempts at limiting differences[26]. This fact emerges with strength not only when it comes to social interactions about contracts, salary, work time length, but it also finds its accomplishment by looking at safety at work and, in general, at work conditions for the workforce. Workers' capacity to contribute to society's development passes through the put at disposal to employers of their own main characteristically trait, being in the workforce. Historical evolution can be read as history of economic and social relationships development.

A specific interest in the way in which safety at work was discussed (if) throughout centuries has raised only in contemporary history, since the end of Nineteenth century. Before this period, references to safety at work in terms of injuries and professional illnesses as byproducts of work relationships had been truly sporadic[27]. Despite the attempts by some physicians to step inside the subject and explore the nexus between work and health, the topic did not develop in a structured and constant way throughout centuries. Professionals such as Bernardino Ramazzini (1633-1714) have favored the rise of a climate of acculturation around professional illnesses but this awareness did not represent the foundation for a social and economic

[26] Crepax, *Storia dell'industria in Italia. Uomini, imprese e prodotti*, il Mulino, 2002.

[27] Among the first references to this topic, it is possible to mention a workpiece from the Renaissance, *De Re Metallica* by Georgius Agricola, published in 1556. The Author focused on workers' conditions in the mining sector, which became a modern theme even more after the discovery of the New World in the Americas and the spoliation of the territories by the involvement of immigrant workers introduced as slaves, in addition to local people. Perrone, *La Leyenda del Indio Dorado. Per la dignità e la salute dei lavoratori: alla carica in cinque secoli di storia*, INAIL, 2010, pp. 27-34.

movement that could lead to systematic introduction of new interactions between the parties[28].

At the rise of Industrialism, enterprises hardly looked in their work organization at factors such as genre or age of workers and at work environment conditions. The Age of Liberalism spread around the most developed countries of the world was accompanied mostly by key concepts such as economic freedom, free trade, reconciliation between private and universal interest in the name of neo-classical economic models, according to which the "natural" trend of market was directed to the reach of the most widespread welfare of people. In parallel to the spread of big corporations and capitalistic forms of market, though, also the need for association and coordination between groups of interests arose, leading to the first form of legal protection of workers, from the Factory Act in Great Britain in 1833 to the German law of 1844, which originated the insurance against accidents at work.

In this sense, economic development brought with it wide inequalities in the income distribution and forms of aggregations between social groups characterized by similar ways of living emerged. In this framework, a "domain of battle" was represented by the organization of work in the name of rationalization. Among others, Friedrich Winslow Taylor overcame, associating his name to process engineering and in a sense "massification" of workforce for efficient forms of employment. Science, production, human factor: all these words underly the denomination of "Taylorism", which can be considered as a masterpiece moment in the history of work organization and in the study of work as the "momentum" to reflect upon workers, equality vs. inequality in terms of employment and even safety at work. His dissection of work moments, tailored distribution of tasks and chronological measurement of workers' efficiency paved the ground to concepts like rhythm, pauses, work time and task analysis, which would lead in the Twentieth century and would establish the studies for "industrial psychotechnics"[29].

[28] In his *De morbis artificum diatriba*, Ramazzini focused on 50 professional illnesses from the study of clinical cases that he studies from his points of observations at the Universities of Modena and Padova. Carnevale, *Prefazione*, in Carnevale, Ramazzini, *Le malattie dei lavoratori*, La Nuova Italia Scientifica, 1982, pp. 9-37.

[29] Friedmann, *Problemi umani del macchinismo industriale. Il progresso tecnico e l'uomo contemporaneo*, Einaudi, 1946.

The need for insurance for workers in case of injuries at work developed together with the evolution of the legal qualification of injuries themselves. In fact, at the dawn of the Industrial Revolution, compensation for workers was a residual condition, attributed if and only if workers were able to demonstrate the etiological link between the injury and the responsibility of the employer at causing it. In the second half of Nineteenth century, the burden of proof reversed, and it became the task of the employer to demonstrate that the enterprise did not have caused the injury. Injuries became a subject connected with contractual responsibility of the employer and they related to professional risk. Given the fact that the employees sell their workforce in exchange for a salary, the employers which take advantage of this factor of production began to have an objective responsibility for the workers' conditions in case of damage to their safety at work[30]. Concepts such as traumatic events and occasion of work entered the lexicon of the discipline.

The Civil Code, then, in 1942, developed the concept of safety from the physical integrity of workers to moral protection. In the following years, law developed from safety at work towards health protection as well. The Italian Constitution of 1948, in fact, affirmed health as a fundamental right of people (Article 32), therefore not as a "good" in the availability of employers, conceptually limiting their potential interactions with workers considering the idea of responsible forms of economic initiative (Article 41). Despite the corpus of norms, though, the trend of injuries at work did not sign concrete improvements. Technical norms had been, until then, slower in their evolution than the broad legal framework and the status of machinery and equipment in factories inadequate or highly variable in any context. For this reason, in the 1950s, laws focused on technicalities through a series of presidential decrees: DPR 547/1955 on injury prevention, 164/1956 on civil works and 303/1956 on industrial hygiene went in the direction. Progressively, the subject of prevention became more connected to legal obligations for employers and less accepted as a social condition that may occur, given the need for poor people to provide their income and accept existing conditions of the workplace. So, to say, the iconography of work began to

[30] Morello, *Alle origini della tutela degli infortuni sul lavoro*, in *DSL*, 2016, 2, https://journals.uniurb.it/index.php/dsl/article/view/742/690.

change, and symbols of safety could start to evolve from a status of acceptance and hope in spiritual faith into a material request for safe conditions[31].

In parallel, the need was the consolidation of employers' participation in the destiny of workers when accidents took place, so that DPR 1124/1965 defined their obligation to enroll at the national insurance institution, giving birth to the modern entity named INAIL ("Istituto Nazionale per l'Assicurazione contro gli Infortuni sul Lavoro")[32].

The development of such institution has always been twofold: on the one hand, providing economic stability to workers who become unfitting for work and their families; on the other hand, introducing good praxes and controls on economic subjects, to foster measures of safety at work which go beyond the mere compliance to law or, in other cases, checking on minimum legal standard implementation. The deep differences between economic subjects are sources for unequal treatment for workers, depending on higher or lower safety standards implementation by their employer; therefore, the role of an institution which oversees their operations becomes crucial. INAIL represents a point of balance by its inner nature, being the place of encounter for employers and social parties.

Technical norms may have introduced forms of protection for workers based on the reality of the company or public institution where workers are employed, generating greater opportunities of protection depending on their scale. The scale of the employer's structure is not the only determining criteria that favors or put obstacles to the level of protection of workers from health and safety points of view. The geographic location of the employer represents indeed another fundamental factor for employee's destiny. Economic and geographic spaces like the European Communities and then the European Union, given the emphasis put on social law, were key for protecting European workers, in relation to their colleagues located almost everywhere else in the world. The keyword for levelling differences and increasing levels of protection regardless of the (European) country in which people are employed was at the basis of principles underlying the European Single Act of 1987. This Act changed rights to vote for decision making processes of laws from unanimity into

[31] Aa.Vv., *Breve viaggio nella prevenzione. Tra iconografia votive e simbologia di sicurezza*, INAIL, 1995.

[32] Aa.Vv., *Storia della prevenzione*, INAIL, 2014, https://fad.gruppopls.com/public/allegati/210/16_108_Quattordicesimo-Allegato_storia-INAIL.pdf.

majority and this modification determined the necessity to accept more easily influences of leading countries that were more apt to push for social improvements in workers conditions.

Not by chance, the European Single Act included the improvement of workplace among its objectives to be pursued under majority votes. In the following phase, Directive 89/391/CEE emanated, determining a turning point for national legal systems in terms of prevention and protection of health and safety. Harmonizing legal systems became crucial, accomplishing a process that the European Communities had initiated in the mids-1970s. Directives took into consideration various aspects of safety at work: methos of identification, measurement and assessments of hazards and risks for workers exposed to chemical, physical, mechanical, biological risks, as well as prohibitions to pursue economic activities under certain conditions of uneven exposition to risk for the workforce. Directive 89/391/CEE introduced a fundamental principle, such as that of reasonable practicability. According to such principle, the limit for work organization is twofold and it is given by the capacity of assessing risks, in line with updated knowledge, and the technological state of progress. Under such conditions, work organizations in European states cannot maximize profits by flattening at the minimum level costs determined by health and safety: employers must be adequate to the status of current knowledge ("culture of safety" in a broad sense) and adapt their equipment and machineries to the latest technological discoveries[33].

This European framework paved the ground for the national horizon in which Italian workers operate, considering the "Single Act" for health and safety, contained in Decrees 626/1994 and 81/2008. Conceptual, organizational and legal developments have led in Italy to the affirmation of principles that were unimaginable a few decades before: not only physical risks of workers have then to be assumed to "goods" to be protected, but socio-psychological ones as well. Once more, structured organizations have now the possibility and the need to offer their workers forms of governance that have to do with aspects such as breaks, flexibility of shifts or the distance between home and workplace, conjugating private and professional life. New models of management entered the field of work organization,

[33] Angelini, *La sicurezza del lavoro nell'ordinamento europeo*, in *WP Olympus*, 2013, 29, https://journals.uniurb.it/index.php/WP-olympus/article/view/270/262.

and health and safety has progressively stepped into the main domains of social relations[34].

5.1. *Adjusting inequalities at work through the standardization of models of management of safety at work: the voluntary norms ISO 45001:2018 and the role of the International Labor Organization*

Given as a fact that work conditions are generally inequal, vary from region to region and depend on economic sector and company dimension and overall organization structure, an attempt to reduce variety and introduce standardization is pursued in the name of models of management implementation. Starting from the voluntary norm named Occupational Health and Safety Assessment Series (OHSAS) 18001:2007, complemented by OHSAS 18002, which contains guideline for the implementation of such norm, the push for larger companies, in particular, to follow rational systems of coordination of safety aspects and potential impacts on workers' safety is continuing and has led to the introduction of the successive norm ISO 45001: 2018. The goals followed by such norms are fundamentally common and include provision for a structured approach for managing occupational health and safety, establishment and maintenance of commitment with that regard, demonstration of commitment to safety excellence, organizational structures in place with clear roles and responsibilities, existence of a continuous improvement culture, consolidate levels of trust and communication, reduction in incident levels with increased measures of performance and contribution to business performance by reducing cost and liabilities.

The underlying principle from the management viewpoint is determined by the "PLAN-DO-CHECK-ACT" (P-D-C-A) system, also known as the Deming Cycle or Shewhart cycle, the Deming wheel of continuous improvement spiral[35]. The introduction of forms of controls for eliminating hazards which workers are exposed to can be started through a planning phase, consisting of setting goals and processes to achieve specific results. Following planning, "do" represents the phase of action and execution of

[34] Tiraboschi, *Nuovi modelli della organizzazione del lavoro e nuovi rischi*, in *DSL*, 2022, 1.

[35] Patel, Deshpande, *Application of Plan-Do-Check-Act Cycle for Quality and Productivity Improvement – A Review*, in *IJRASET*, 2017, 5, 1, https://www.researchgate.net/profile/Vivek-Deshpande/publication/318743952_Application_Of_Plan-Do-Check-Act_Cycle_For_Quality_And_Productivity_Improvement-A_Review.

the measures of prevention. Once the system is in place and executive in its day-by-day implementation, then "check" requires monitoring and evaluation of results, according to certain specifications. Last, "act" is the phase post-review and has to do with results reached and corrective action. This system allows a reflection on inequality between industries and employment conditions, given the fact that it is frequently implemented in the manufacturing industry, where it is mainly originated as source to reduce waste (waiting time, idle, failure, defects).

The steps that contributed from the logics of the P-D-C-A method of conceiving organizational system of management towards ISO 45001 omni-comprehensive approach to the management of safety at work has had a push in the last two decades. During such period, safety culture has evolved to a new conception of preventive safety culture, leaving behind the original approach which aimed at the mere implementation of safety regulations and moving towards a broader emphasis on forms of direct participation of the workforce into the life of the organization[36]. If the former approach was directly centered on the management and its own engagement, skill, knowledge about safety rules and obligations, the latter moves the focus from "legal compliance" into constructive interactions between all stakeholders, inside and outside the organization.

This is the reason why the International Labor Organization (ILO), the specialized institution of the United Nations which deals with labor and labor parties, founded with the specific dual objective of posing basic standardized conditions for decent work at the benefit of workers and generating more harmonious international market contexts[37]. ILO recognizes

[36] Neag, Ivascu, Draghici, *A debate on issues regarding the new ISO 45001:2018 standard adoption*, in *MATEC*, 2020, 305, 00002, https://www.matec-conferences.org/articles/matecconf/pdf/2020/01/matecconf_sesam20_00002.pdf.

[37] Dinman, *Impact of the International Labour Organization on Occupational Health and Safety Laws and Practice*, in *JOM*, 1987, 29, 4, https://www.jstor.org/stable/45013811. In the Author's words, "the roots of the ILO extend back to the late 19th century, when several economists foresaw a need for international economic agreement to alleviate hardships to workers arising from industrialization and international competition. In their views, such deleterious conditions would ultimately pose potential dangers to peace and international harmony. By 1900, the International Organization for Labour Legislation had been formed, and 6 years later it formulated and adopted two conventions, i.e., international treaties. One of these initial efforts in international legislation concerned a subject of interest to occupational health: prohibition of the use of yellow phosphorus in match manufacture". Today 187 Member States have ratified their adherence to this International Organization.

the ISO 45001 as key norm for guiding employers towards the goal of levelling disparities of treatment and offering valid models of work organization. Leadership and workers participation, jointly, assumes thus the fundamental meaning in the system[38]. So, to say, the fostering of models of extensive forms of management of safety at work, particularly for large enterprises, enters the field of human rights protection in a globalized world, which constituted the epicenter of international debates since the late nineteenth of the past century[39]. ILO develops international standards related to labor and work, exerting considerable influence on laws and regulations of member States through international Conventions and Recommendations on different fields of work condition[40].

Among others, two fundamental documents are represented by No. 155, Occupational Safety and Health Convention, and No. 187, Promotional Framework for Occupational Safety and Health Convention. Countries which voluntarily decide to ratify a Convention have then one year as span of time to finalize national debate and internal ratification, before the norms of the text should come into force. For both Convention, nowadays less than 50% of the International Community of Member States (data updated at 2023, extrapolated from the group of countries adhering to the ILO) have successfully completing the iter of ratification of those texts[41]. When we con-

[38] The system of interactions between management and workforce does not imply that there is minor accountability for the managers on the effectiveness of the implementation of measures of prevention. Top management must take overall responsibility and protect workers by introducing a system of management that will include, not limited to such processes, incidents and near misses reporting and corrective actions on the basis of occurrences, supporting the establishment joint committees that analyze safety trends, clearly defining roles and responsibilities of all actors, defining an Occupational Health and Safety (OHS) policy. Policy must include a commitment to consultation and participation of workers. The organization must also provide training and resources necessary to ensure consultation and participation and must provide all relevant information about the management system.

[39] Mayer, Gostin, *Human Rights in Global Health. Rights-Based Governance for a Globalizing World*, Oxford University Press, 2018.

[40] As an example, we can mention the Convention and the Recommendation relevant to protection of workers against ergonomic risk factors at the workplace, Convention No. 127 and Recommendation No. 128, which specify the international requirements concerning the manual transport of a load. As well known, dual standards from State to State with this regard may represent at once forms of disparities in terms of workers' health protection and economic market disruptions, creating forms of dumping based on safety at work.

[41] Trivedi, Lai, *Ratification Status of International Labour Organization (ILO). Fundamental Conventions on Occupational Safety and Health*, in *OEMJI*, 2024, 2, 2, https://www.researchgate.

sider that national ratification is nothing more than the formal prelude to the substantial possibility of the effective implementation of requisites and then disparities between economic subjects are enormous and effectiveness of public controls on rules implementation has a great variety from state to state, we have the clear picture of the long way to go to reach forms of equality in worldwide economy facing workers and their health and safety.

6. *Conclusions*

This research aims to contribute to the interdisciplinary debate on how contemporary companies can transform themselves into conscious agents of social change, promoting fair and inclusive working relationships through the strategic integration of Corporate Social Responsibility (CSR), integrated corporate welfare, and workplace safety.

The paper highlighted that promoting fair and inclusive working relationships is not only an ethical and social imperative, but also a conscious strategic choice capable of generating lasting value for the company, its workers, the local area, and the community as a whole.

Through the analysis of historical cases (Olivetti, Marzotto, Pirelli) it has shown that this awareness is rooted in Italian entrepreneurial thought, although often characterized by a tension between paternalism and autonomy, between social control and human dignity. In contemporary cases (Barilla, Lavazza, EssilorLuxottica), the integration of corporate welfare and an explicit commitment to gender equality and inclusion represents the response to workers' needs and is adapted to contemporary ethical demands and awareness.

The adoption of regulatory standards such as UNI/PdR 125:2022 and SA 8000 represents a formalization of this vision, allowing companies to structure their commitment within recognized, measurable, and certifiable frameworks.

In the same way, international standards such as those dictated by the ISO for managing and integrating models of management contribute to

net/profile/Ashish_Trivedi4/publication/382825950_Ratification_Status_of_International_Labour_Organization_ILO_Fundamental_Conventions_on_Occupational_Safety_and_Health.

shift from a mere orientation of legal compliance towards a broader a system in which all stakeholders interact and search for common ways to improve standards of safety and health prevention.

Therefore, the contemporary company, which aspires to become an agent of social change, can consciously assume the role of promoter of fair and inclusive working relationships, through the systemic integration of CSR policies, integrated corporate welfare, and a commitment to equality and inclusion for all stakeholders, not only through means of contractual interactions with the workforce but by the increase of the offering of service and higher standard setting for workers.

Abstract

This research paper addresses the issue of corporations as conscious agents of social change in the context of contemporary challenges related to Equality, Diversity, and Inclusion (EDI), through the combination of two different segments of organizational management.

On the one hand, the study analyzes how the strategic integration of Corporate Social Responsibility (CSR) and integrated corporate welfare represents a concrete operational tool through which organizations can address structural inequalities in the workplace and promote fair and inclusive working relationships.

On the other hand, the study takes into consideration another focal aspect of organization as key engine for workers' condition upgrading and levelling: health and safety at work.

Keywords

Corporate Social Responsibility, Integrated Corporate Welfare, Gender Equality, Inclusion and Equity, Stakeholder Theory, Organizational Change, Health and Safety at Work.

Angela Zaniboni

How Industrial Relations shape organizational Equity: The case of Automobili Lamborghini

Contents: 1. Introduction - Context and Problem Statement. 2. Equity: from abstract principle to organizational device. 3. Methodology. 4. The Industrial relations model at Automobili Lamborghini. 5. Practices for organizational equity. 5.1. Reorganization of working time. 5.2. Shared parenting and family policies. 5.3. Diversity & inclusion policies and cultural change. 6. Data analysis. 7. Discussion.

1. *Introduction - Context and Problem Statement*

In recent years, academic and managerial debate on work has increasingly engaged with the themes of Diversity, Equity & Inclusion (DEI – an acronym widely used in academic and legal contexts, as well as in HR and management). What initially appeared as a dimension of HR policies – comprising value-based initiatives, awareness projects, and voluntary programs – has progressively evolved into one of the central indicators of contemporary work quality and the sustainability of organizational models. Indeed, the introduction and subsequent implementation of these practices have converged over time into what is known as Diversity Management, an organizational approach voluntarily adopted to create value within the organization itself. The pandemic, shifting values among younger generations, the growing weight of caregiving responsibilities, and the acceleration of technological transitions have further expanded the awareness that organizations can no longer limit themselves to guaranteeing formal rights, but must adopt an organizational approach aimed at promoting more equitable and inclusive workplaces.

Despite this growing emphasis, the literature highlights a striking paradox: increased attention has not consistently translated into substantial and lasting changes in organizational outcomes[1]. DEI policies proliferating across European organizations – especially in their 'traditional' formulation – often appear voluntary, fragmented, and lacking in impact[2]. Many companies make bold commitments, publish sustainability reports, implement unconscious bias training, or strengthen ethical codes, yet these interventions rarely lead to structural changes in work organization[3]. Initiatives largely remain confined to the HR domain, lacking transformative power over organizational processes, career progression, work time distribution, or workload management[4]. Evaluation of outcomes is often partial or limited to climate indicators, while shared accountability mechanisms involving worker representatives are scarce[5].

The risk of this approach is that DEI policies, although well-communicated, fail to impact the material conditions of individuals, intervening only at the margins of inequality rather than addressing its structural causes. Yet, and this is a central point in the most recent literature, inequalities do not only emerge from individual behaviors but are embedded in the very architecture of work[6]: in schedules, shift systems, skill hierarchies, evaluation mechanisms, access to opportunities, and the ability to reconcile personal and professional responsibilities.

In this context, the concept of equity plays a fundamental role. The distinction between equality and equity, widely discussed across various strands of research, shows that equality tends to offer everyone the same formal op-

[1] Ahmed, *On Being Included: Racism and Diversity in Institutional Life*, Duke University Press, Durham, 2012; Ainscow, *Promoting inclusion and equity in education: Lessons from international experiences*, in *NJSEP*, 2020, n. 1, pp. 7-16.

[2] Ponzellini, Riva, *Work-life balance e performance aziendale nella prospettiva del Diversity Management*, in *SL*, 2014, n. 2, pp. 83-98; Gazzaroli, Diallo, Gozzoli, *A critical perspective on diversity and diversity management for a contextualised and conscious approach*, in *ER*, 2025, vol. 47, n. 9, pp. 214-233.

[3] Dobbin, Kalev, *Why Diversity Programs Fail*, in *HBR*, 2016, nn. 7-8, pp. 52-60.

[4] Ravazzani, Mazzei, Butera, Fisichella, *Diversity, Equity & Inclusion. Stato dell'arte nelle aziende italiane*, FrancoAngeli, Milano, 2023.

[5] Telljohann, *Le nuove piste di Lamborghini e Ducati*, in Carrieri, Nerozzi, Treu (eds.), *La partecipazione incisiva*, Il Mulino, Bologna, 2015, pp. 113-130.

[6] Acker, *Inequality Regimes: Gender, Class, and Race in Organizations*, in *G&S*, 2006, vol. 20, n. 4, pp. 441-464; Konow, Saijo, Akai, *Equity versus equality: Spectators, stakeholders and groups*, in *JEcPsy*, 2020, vol. 77, 102171.

portunities, while equity recognizes that individuals start from profoundly different conditions. As a result, treating everyone the same may reproduce – rather than reduce – existing asymmetries. Equity, in fact, highlights the multiple structural and intergenerational inequalities that affect actual access to resources, opportunities, and possibilities for growth[7]. Similarly, the concepts of diversity and inclusion take on distinct depths: diversity goes beyond a value-based dimension, positioning itself as an intentional commitment to embrace differences – whether cultural, linguistic, gender-based, or educational[8]; inclusion, on the other hand, is configured as a critical response to exclusion and segregation, aiming for full integration. The concept seeks to go beyond diversity, acting as a critical disposition that questions dominant narratives which perpetuate exclusion and discrimination[9].

These concepts express the set of activities aimed at recognizing and valuing the multiple qualities and characteristics that shape each person's unique identity in the workplace, including demographic, social, and cognitive dimensions such as gender, age, generation, culture, values, skills, and working style[10].

Considering this conceptual evolution, it becomes increasingly relevant to ask how, within contemporary organizational models, equity can be made a concrete, stable, measurable concept capable of guiding transformative actions in the workplace. The literature[11] suggests that such a result cannot be achieved through HR policies alone. What is needed is an infrastructure that holds legitimacy, continuity, bargaining power, and the capacity to intervene on the material determinants of work: in organizations, this infrastructure is represented by the system of industrial relations.

The concept of industrial relations refers to the management of social relations between the company and workers' representatives aimed at ensuring control over the collective employment relationship in a way that

[7] Konow, Saijo, Akai, *cit*.

[8] Thomas, *Interactive session: Equity, diversity, and inclusion in open education*, paper presented at the *Oregon Statewide OER Summit*, Lane Community College, Eugene, 17 May 2019.

[9] Villegas, *Inclusion, exclusion, segregation, and integration: How are they different?*, in *Think Inclusive*, 11 July 2017; Ahmed, *cit*.

[10] Ravazzani, Mazzei, Butera, Fisichella, *cit*.

[11] Kalev, Dobbin, Kelly, *Best Practices or Best Guesses? Assessing the Efficacy of Corporate Affirmative Action and Diversity Policies*, in *ASR*, 2006, vol. 71, n. 4, pp. 589-617; Holck, *Unequal by Structure: Exploring the Structural Embeddedness of Organizational Diversity*, in *Organization*, 2018, vol. 25, n. 2, pp. 242-259.

supports business competitiveness[12]. From this perspective, industrial relations are not limited to conflict regulation but can take on a proactive role in the construction of solutions. Second-level decentralized bargaining is considered the most suitable tool for developing concrete and context-specific solutions. Among the many topics addressed are participation, welfare, work-life balance, DEI policies, training, and organizational change. However, this generative activity of practices and innovations depends on the quality of social dialogue and the ability of the parties to negotiate constructively, working to combat the emergence of inequalities[13]. Industrial relations, therefore, do not merely regulate conflict but can serve as a driver for inclusion and act as an enabler in building innovative solutions for organizational equity.

It is precisely in this regard that the experience of Automobili Lamborghini becomes particularly significant. Over the years, the company has developed an advanced participatory model of industrial relations, in which information, consultation, and second-level bargaining constitute permanent tools for the governance of work. Unlike what happens elsewhere, DEI practices are not confined to the discretionary sphere of HR but are integrated into a structured, bilateral, and continuous process. The trade union is not merely informed but plays an active role in the design of measures: it is informed, it emerges, and it engages in discussion.

Collective bargaining, in fact, acts directly on those levers that can generate inequalities in the workplace: working time, shifts, workloads, flexibility, welfare, and protections for those in vulnerable conditions or with caregiving responsibilities. Equity thus becomes a matter of work governance, also expressed through bargaining tools that include monitoring, periodic review, and shared accountability. The 'Social Innovation' Working Group, the Bilateral Technical Committees (BTC), the constant sharing of information, and experimentation processes represent spaces where diversity and inclusion are not just values but concrete objects of regulation.

This very ability to treat equity as a collective – not merely individual – issue is one of the distinctive features of the Lamborghini model. The collective lens makes it possible to integrate tools and perspectives, allowing for the

[12] Testoni, *Manuale di tecnica di relazioni industriali*, Giuffrè Editore, ADAPT University Press, Milano, 2014.

[13] Carrieri, Della Rocca (eds.), *Il lavoro dopo il Novecento. Nuove forme, nuovi conflitti*, Donzelli, Roma, 2019.

identification of needs that are not immediately visible, the representation of demands from heterogeneous groups of workers, and the construction of solutions that do not penalize those with less voice within the organization.

This perspective also highlights a significant gap in literature. While studies on DEI practices focus primarily on HR processes and managerial approaches, the systemic relationship between industrial relations and equity policies remains underexplored. Analyses showing how participatory systems can strengthen – rather than hinder – the construction of inclusive contexts are still lacking. Even rare is the observation of equity as a negotiable, regulatable, and institutionalizable object through collective bargaining. The aim of this research is to investigate whether an advanced participatory model can represent the transformative lever to make equity operational, measurable, and sustainable within a complex production context. The objective of this paper, therefore, is not to present a 'best practice' case, but to shed light on how equity can become a driver of change and, consequently, to explore how participation and bargaining – when well-structured – can serve as the foundation for a fair transformation of work.

2. *Equity: from abstract principle to organizational device*

A solid understanding of the theoretical distinction between equality and equity constitutes the conceptual foundation of this work[14]. In the international debate on rights and work organization, equality implies uniform treatment for all, offering the same resources and opportunities regardless of individual differences. For example, a company might apply identical policies to everyone – same working hours, same benefits, same rules – assuming this ensures fairness. However, mere formal equality risks ignoring differences in starting conditions and existing systemic barriers (related, for instance, to gender, socioeconomic status, or caregiving responsibilities), ultimately perpetuating or even exacerbating existing disparities. In contrast, the concept of equity shifts the focus from equal treatment to substantive justice[15]: it recognizes that different starting points require dif-

[14] Konow, Saijo, Akai, *cit.*

[15] Fraser, *Redistribution or Recognition? A Political-Philosophical Exchange*, Verso, London-New York, 2003.

ferentiated measures to ensure genuine access for all. In other words, equity favors the correction of inequalities through tailored solutions, calibrated to specific needs, rather than applying a one-size-fits-all approach. Thus, equality guarantees equal inputs (the same resources for everyone), while equity aims for equal outcomes (ensuring everyone has the conditions to succeed) through differentiated support mechanisms. This distinction is crucial: identical treatment is not automatically fair, especially in the presence of heterogeneous personal circumstances.

In organizational contexts, the shift from equality to equity translates into moving beyond uniform solutions in favor of targeted interventions. An equity-oriented organization does not apply the same rules to everyone indiscriminately but instead seeks, where possible, to tailor policies and practices to the characteristics of groups and individuals, with the goal of ensuring equivalent opportunities for all. This means, for example, adapting working hours, benefits, leave policies, and career paths to employees' needs, thereby embedding a concrete approach to equity within the organization rather than treating it as a merely theoretical construct. Such an orientation requires a deep analysis of how the organization functions in order to identify where structural asymmetries – implicit or explicit – are embedded and to develop organizational or regulatory tools to correct them. These asymmetries are not only attributable to individual differences but are often built into the very structures of work. For instance, they may manifest through uniform regulations that produce unequal effects: rigid standard work schedules, limited access to flexible work or remote work, unequal ability to use leave and reconciliation measures for those with caregiving responsibilities, unbalanced distribution of (including cognitive) workloads, disparities in career paths, access to training, or opportunities for professional mobility. In all these areas, equity acts as a redistributive and reorganizational principle, requiring the reshaping of processes and practices to compensate for disadvantages and remove obstacles faced by certain groups. From this perspective, equity becomes an element of organizational justice, influencing how the company allocates resources, opportunities, and working time among employees. Ensuring equity is therefore not only a matter of ethics but also of organizational effectiveness: a workplace perceived as fair and inclusive is associated with higher levels of productivity, innovation, and employee engagement.

It is important to emphasize that the equity-based approach shifts the center of gravity of Diversity, Equity & Inclusion initiatives toward a

structural paradigm. As highlighted by literature[16], many traditional corporate diversity interventions focus on the individual (e.g., anti-bias training, awareness or sensitization programs) but fail to sufficiently impact actual outcomes in terms of equity and inclusion. This occurs because such programs, although well-intentioned, often merely promote awareness or attempt to change personal attitudes, without modifying the organizational mechanisms through which inequalities are reproduced. Equity, by contrast, requires intervention on processes and the rules of the game[17]: as research in behavioral economics applied to the workplace suggests[18], it is "by changing systems – especially at key moments in organizational operations where bias tends to emerge – that we can make workplaces more equitable, cohesive, and productive". In practice, this means, for example, revising personnel management criteria (from hiring to evaluation to career paths) to "build fairness into existing processes" and remove hidden obstacles that lead to unequal treatment[19]. 'Data-driven design' approaches[20] – based on the analysis of internal data to identify gaps and pain points – are emerging as effective tools for designing targeted interventions that address equity gaps within companies and allow for scientific testing of their impact. In short, treating equity as an institutional objective means integrating it into the formal mechanisms of the organization (HR policies, contracts, decision-making processes, evaluation metrics), rather than relegating it to statements of intent or ad hoc initiatives. Not coincidentally, some companies have begun to explicitly declare equity and inclusion as structural values to be pursued through dedicated policies and internal standards.

A crucial aspect, which lays the groundwork for the following sections, is the translation of equity into an organizational and bargaining device. To move from an abstract principle to concrete implementation, equity must be institutionalized through shared rules and practices. In this sense, the role of industrial relations is essential: collective bargaining and participatory

[16] Bohnet, Chilazi, *Make Work Fair: Data-Driven Design for Diversity and Inclusion*, Harvard University Press, Cambridge, 2025.

[17] Bohnet, *What Works: Gender Equality by Design*, Harvard University Press, Cambridge, 2016.

[18] Bohnet, Chilazi, *cit.*

[19] Kalev, Dobbin, Kelly, *cit.*

[20] Williams, Dolkas, *Data-Driven Diversity*, in *HBR*, 2022, vol. 100, n. 2; Pinkett, *Data-Driven DEI: The Tools and Metrics You Need to Measure, Analyze, and Improve Diversity, Equity, and Inclusion*, Wiley, Hoboken, 2023.

models serve as the infrastructure supporting organizational justice, as they allow for the codification of differentiated treatments into binding rules that make the organization more equitable. Numerous studies[21] in the field of labor relations have emphasized that the free market and unilateral corporate policies alone often do not guarantee equity; to balance economic efficiency with social justice, it is necessary to establish rules and institutions capable of governing the system and ensuring broadly shared prosperity. In other words, equity becomes a negotiable object: it can (and must) be included in trade union agendas and collective agreements, made measurable, and subjected to periodic review through shared indicators and accountability systems[22]. This shift from the individual to the collective level is decisive, as it allows the principle of equity to be anchored in enforceable rights and formal procedures.

Ultimately, to generate real change, equity must permeate the organizational structure through shared policies, processes, and tools. In certain contexts, as demonstrated by the case analyzed in the following sections, this transition from ideal to action has been made possible thanks to an advanced system of industrial relations, capable of translating differentiated needs into concrete negotiated solutions. It is precisely through the analysis of these dynamics – and in particular the role of collective bargaining and participation – that this paper will explore how equity can become a true regulatory and organizational device.

3. *Methodology*

The choice of Automobili Lamborghini S.p.A. as the case study[23] for this research does not stem from a merely descriptive intent, but from the analytical need to observe a mature participatory model in action, within a highly specialized manufacturing context. In the scope of this work, the company's participatory framework is not a mere preliminary consultation,

[21] Carrieri, Della Rocca, *cit.*; Freeman, Medoff, *What Do Unions Do?*, Basic Books, New York, 1984; Polanyi, *La grande trasformazione*, Einaudi, Torino, 2004.

[22] Telljohann, *cit.*; Pillinger, Wintour, *Collective Bargaining and Gender Equality*, Agenda Publishing, London, 2018.

[23] Gillham, *Case Study Research Methods*, in *Real World Research*, Continuum, London-New York, 2000, pp. 1-106.

but a structured process that has enabled the introduction of innovations and the achievement of joint results.

The case study methodology was deliberately chosen, as it is effective not only in describing the output of a research project, but also the context in which it took place, highlighting its specific features. The aim of the investigation was to assess whether it was possible, within the organization under study, to adopt targeted policies and interventions to bridge equity gaps, and whether industrial relations have served as an infrastructure for organizational equity.

Over time, the company has developed a particularly advanced participatory system that has enabled the introduction – through collective bargaining – of Diversity, Equity and Inclusion practices.

Methodological triangulation is at the core of the research design, combining qualitative and quantitative sources to ensure the robustness and validity of the results. First, a systematic document analysis was conducted on company-level bargaining (integrative agreements and participatory protocols from recent years). This made it possible to reconstruct the evolution of Lamborghini's participatory model and to identify the main innovations in terms of equity and inclusion. The contractual texts – with particular attention to the new Integrative and Participation Agreement signed on January 24, 2024 – were coded by key themes, distinguishing the areas of DEI intervention.

In parallel, extensive field observation was carried out. Thanks to the internal role of the author, it was possible to directly participate in numerous meetings, bargaining sessions, and daily activities related to the case. This prolonged participant observation[24] made it possible to capture relational nuances and mechanisms of collaboration between the social partners that would be difficult to detect from the outside. The observation was also made possible by conducting semi-structured interviews with a targeted and diverse sample (company executives, HR representatives, and internal trade union delegates - RSU)[25].

Finally, the research integrated both qualitative and quantitative components through the 'Inclusion Survey'[26], addressed to the entire company

[24] Corbetta, *Metodologie e tecniche della ricerca sociale*, il Mulino, Bologna, 1999.

[25] Kvale, *Interviews: An Introduction to Qualitative Research Interviewing*, Sage Publications, Thousand Oaks, 1996; Albaret, Deas, *Semistructured Interviews*, in *Qualitative Research Methods for International Organizations*, JSTOR, 2023, pp. 81-93.

[26] Creswell, Rafferty, Carr, *Longitudinal Surveys*, in *Social Science Research Methods*,

population and focused on perceptions of inclusion and diversity within the organization.

The adopted methodological design – a single in-depth case study using multiple sources – is consistent with the objective of exploring equity as an organizational and bargaining process. The triangulation of different techniques (qualitative and quantitative) strengthened the internal validity of the results, allowing for the comparison and validation of information across different levels. This approach made it possible to detect not only what has been done at Lamborghini in terms of DEI, but also how such innovations were made possible, shedding light on the causal relationships between participation, collective bargaining, and the promotion of organizational equity. In summary, the methodology employed offers a holistic and empirically grounded view of the "Lamborghini case", laying the foundation for discussing – in the following sections – the theoretical and practical lessons emerging from this experience.

4. *The Industrial relations model at Automobili Lamborghini*

Since the late 1980s, Automobili Lamborghini S.p.A. has progressively developed an advanced model of industrial relations, in which the participation of workers and their trade union representatives has become an integral part of corporate governance. In parallel, the company has developed its own policies and initiatives on diversity, equity, and inclusion (DEI), which have been progressively integrated into its integrative agreements – evolving from general references to concrete and measurable measures embedded in collective bargaining.

Even before the acquisition by Audi Volkswagen in 1998, the company was no stranger to negotiation. From its early years, there was space for dialogue between the social partners, with significant dynamics of exchange, even in a context marked by alternating phases of growth and crisis. It was during this period that the distinctive features of a system of industrial relations began to take shape – one based on constructive exchange and rooted in a territorial culture where trade unions were already strongly present. For this reason, Lamborghini

is often described as a company with 'fertile ground,' ready to embrace the evolution that would come with its entry into the Audi-VW Group.

The pre-acquisition phase was marked not only by the signing of union agreements but also by the conclusion of Integrative Company Agreements. In 1988, one of the first such agreements was signed[27], in which management recognized the role of the Factory Council and introduced important procedures for information sharing and prior consultation with worker representatives – including the commitment to inform the union about industrial plans and organizational changes before their implementation. This was a significant step, as it introduced elements that went beyond mere *ex-post* communication, valuing *ex-ante* dialogue and laying the foundation for a more structured exchange.

The subsequent agreement, signed in 1991[28] came at a time of serious production crisis for the company, and industrial relations became one of the tools used to manage the situation. Elements of joint crisis management were introduced, including procedures for informing the Factory Council before activating measures such as the Wage Guarantee Fund (Cassa Integrazione Guadagni), along with employment guarantees. It was during this phase that it became clear that company-level bargaining was not only a tool for distributing economic bonuses – already in place since 1968[29] – but also a means to involve the union in developing plans to avoid redundancies and safeguard production continuity.

Finally, in 1995[30], the first experiments in direct participation and group-based work organization were launched: the parties agreed to implement the creation of Working Groups composed of management, trade union representatives (RSU), and non-delegated workers, tasked with contributing to the identification and improvement of operational processes and working conditions. Another crucial innovation was the introduction of a 'cooling-off clause,' under which the company and unions agreed not to take unilateral action in the event of disputes for at least seven days, dedicating that time to meetings aimed at finding shared solutions. This laid the foundation for a climate of participatory and non-confrontational

[27] *Contratto Integrativo Aziendale*, 18 May 1988.
[28] *Contratto Integrativo Aziendale* 16 December 1991.
[29] *Accordo sindacale* 5 July 1968.
[30] *Contratto Integrativo Aziendale* 27 July 1995.

industrial relations, oriented toward dialogue and problem-solving through negotiation.

In the post-acquisition phase, the industrial relations model began to be influenced by that of the parent company, gradually evolving into a unique integration of the Italian participatory tradition and the German codetermination system – generating a form of negotiated cooperation that has few parallels in the national landscape[31]. The arrival of the VW Group in 1998 brought resources and a reference model – as a manager from that period stated, "the Audi acquisition provided a multi-level consultation structure and strengthened transparency and openness; an antagonistic approach – in which information is withheld from the union – would not have worked," emphasizing that "industrial relations and organizational performance must collaborate… they must grow together" (Management Interview, 2023). At the documentary level, the 1999 integrative agreement[32] represents a historic turning point, introducing a fully structured model of corporate participation inspired by the German model but adapted to the Italian context: industrial relations began to take on a permanent structure with the introduction of a calendar of meetings between company management and the union. The agreement also included significant improvements in working hours and individual rights for employees, effectively laying the groundwork for many internal equity measures: experimental flexible working time mechanisms were introduced, and leave entitlements were extended beyond those provided by the national collective agreement (CCNL).

In the following years, the system was consolidated and prepared for the mature participatory model that exists today. A key milestone was the signing of the Volkswagen Group's 'Charta of Labor Relations' in 2009, which promotes principles of cooperation and participation and encourages company-level bargaining to adopt them. The company, through the RSU and local unions, formally adhered to the Charta in 2011, and the 2012 Integrative Agreement[33] marked the consolidation of these principles within the organization. It was at this point that the Bilateral Technical Committees (BTCs) were formally established – joint bodies composed of company and union representatives with consultative and proactive functions on specific

[31] Carreri, Gosetti, Mattei, *Il "caso" Lamborghini: contrattazione continua e tempi di lavoro*, in *LD*, 2024, n. 4.

[32] *Contratto Integrativo Aziendale* 12 November 1999.

[33] *Contratto Integrativo Aziendale* 4 July 2012.

topics. The introduction of the BTCs, as stable bodies within the participatory architecture, reflects both the German *Bestimmung* system and the working groups already piloted by Automobili Lamborghini in the 1990s.

The company's inclusive capacity has grown in parallel with the evolution of these participatory mechanisms. In fact, the historical trajectory shows that Lamborghini's union activity initially focused on traditional issues (wages, working hours, job classifications, training), with no explicit references to Diversity & Inclusion – except in compliance with legal obligations on disability or equal opportunities. However, over time, negotiated participation has progressively incorporated the dimensions of equity and inclusion: since the early 2000s, topics such as work-life balance, organizational well-being, and equal opportunities have entered company agreements, becoming subjects of negotiation between the parties. The Integrative Agreement signed in 2015[34] definitively consolidated the participatory model and fully introduced DEI topics into bargaining: in particular, welfare and parental support measures were introduced or strengthened, including additional parental leave beyond what is provided by the CCNL, the establishment of agreements to support parenting, and a commitment to positively consider part-time requests for family needs. Measures supporting flexible working hours were expanded, and a commitment was signed to pilot agile work arrangements (so-called smart working) for white-collar employees by 2018.

Today, the Lamborghini model integrates DEI measures formalized in the integrative agreements of 2015[35], 2019[36] e 2024[37], which are now firmly embedded in the organizational system. The pillars of participation – information, consultation, and bargaining – have tangibly enabled a transformation in the company's inclusive capacity: initially, DEI topics were not part of the dialogue between the parties, but the constant sharing of information made the needs of different groups visible, active consultation allowed for the inclusion of diverse and alternative perspectives, and ultimately, bargaining made the resulting solutions enforceable and stable. The net effect of these innovations is a more inclusive organization, in which workers rec-

[34] *Contratto Integrativo Aziendale* 8 June 2015.
[35] *Contratto Integrativo Aziendale* 8 June 2015.
[36] *Contratto Integrativo Aziendale* 26 July 2019.
[37] *Contratto Integrativo Aziendale* 24 January 2024.

ognize that the company's attention to equity and equal opportunities has grown compared to the past.

Continuous bargaining has thus ensured that the three pillars of participation did not remain mere theoretical principles but were translated into stable procedures. This ongoing structured dialogue has enabled a shift from traditionally adversarial bargaining to a true system of corporate co-governance, in which workers have a voice in strategic decisions and – within the procedures established by company agreements – can influence their own working reality, with positive effects on the internal climate and perceived organizational justice.

To fully understand the model, it is important to recognize that the social partners have been a crucial success factor, having anticipated innovation. Both parties – management and unions – have invested in participation and embraced the structured model introduced with the Group's arrival. As a manager from that period stated, "the Audi acquisition provided a multi-level consultation structure and strengthened transparency and openness, showing that an antagonistic approach – in which information is withheld from the union – would not have worked," emphasizing that "industrial relations and organizational performance must collaborate… they must grow together" (Management Interview, 2023). But the real innovation came from the people at Lamborghini, who translated those principles into daily practice. The union seized the opportunity to expand its role beyond economic demands, becoming a co-architect of organizational and inclusive policies. The company's management, for its part, invested in joint training and the creation of mutual trust, recognizing the value of worker involvement as a source of perspective enrichment, thereby enabling the development of innovative solutions and real competitive advantages. A trade union representative recalls the post-acquisition transition phase: "Our RSU went through a period of waiting and learning; we even visited German factories to understand metrics, bargaining methods, and how to achieve goals together" (RSU Interview, 2023). This attitude of mutual learning and openness made it possible to adapt the VW model to local specificities, rather than imposing it rigidly.

The geographical context, characterized by a strong social fabric, also contributed to the system's consolidation: Sant'Agata Bolognese is located in the heart of Emilia, a region known for its strong union presence, culture of dialogue, and pragmatic approach to problem-solving. From the documen-

tary analysis presented above, it is clear that when Automobili Lamborghini was acquired, it already had a well-established system of industrial relations. This facilitated the local translation of the German participation model: as researchers have noted, the VW framework merged with a tradition of labor relations rooted in years of territorial practices[38]. Additional factors also stimulated the development of the industrial relations system: on the one hand, the company's single production site allowed for the system to evolve through direct and frequent interactions between the social partners; on the other hand, the parties themselves engaged in joint training projects on the principles of the Charta and the broader participation system.

5. *Practices for organizational equity*

Having outlined the evolution of the company's participation system, the following sections will analyze different areas of intervention through which industrial relations at Lamborghini have translated organizational equity into concrete measures: the reorganization of working time, policies supporting parenting and family life, and more broadly, Diversity & Inclusion initiatives. In each of these areas, structured participation has made it possible to identify innovative solutions that combine improvements for workers with organizational needs, promoting greater internal justice and equity.

5.1. *Reorganization of working time*

In recent years, Lamborghini has implemented a radical reorganization of shifts and working hours, with the stated goal of improving the work-life balance of all employees – not merely increasing production flexibility. This initiative is at the heart of the 2024 Integrative and Participation Agreement and represents a practice of equity, as it aims to rebalance reconciliation opportunities between white-collar and blue-collar workers. In the past, office staff already benefited from flexible hours and the possibility of working remotely (agile work or smart working), thus managing both time and place of work with greater autonomy. Conversely, production workers, bound to

[38] Carreri, Gosetti, Mattei, *cit.*

physical presence on the shop floor, were almost always excluded from these reconciliation measures due to their shift-based work schedules. Making the organizational structure more equitable and inclusive allowed the parties to rethink the entire system, ensuring work-life balance tools that take into account the specificities of different roles. To this end, a Bilateral Technical Committee (BTC) composed of engineers and technical experts was established. This committee conducted an in-depth analysis of the existing organization, identifying solutions capable of supporting the company's growth path and updating a shift system that no longer met current needs. The technical approach made it possible to avoid political solutions, focusing instead on developing an organizational model that could restructure working hours while safeguarding both company productivity levels and pay equity. For production workers, the agreement introduced a new weekly schedule alternating between five-day and four-day workweeks: departments operating on two shifts or a central shift benefit from one Friday off every two weeks, while departments on three shifts receive two Fridays off every three weeks. This measure was accompanied by a reduction in Paid Annual Leave (PAR), ergonomic improvements, and enhanced organizational efficiency, ensuring the overall sustainability of the new system. In parallel, the already extensive flexibility system for white-collar staff was further strengthened, confirming and expanding the hybrid work model. Employees retained the option to work remotely up to twelve days per month, and a flat-rate time bank mechanism was introduced, allowing up to twelve days per year to be used for the recovery of mental and physical energy.

This reorganization represents an emblematic case in which operational flexibility is combined with equity among workers. The main 'constraint' to overcome was the very nature of the roles: many traditional reconciliation measures (adaptable hours, telework) were not applicable to production line workers for obvious practical reasons. The challenge, therefore, was to find a formula that would also return free time to this category. The most innovative contribution of the technical committee was to bring expertise to the bargaining table, shifting the discussion from a purely 'political' level to an objective and design-oriented one, restructuring working hours in a differentiated way for each department. Although it is not yet possible to report the final outcomes of the pilot project – still ongoing and expected to conclude at the end of March 2026 – this research presents some of the data that emerged from the 2024 internal WellBeing Survey. Most of employees

who participated in the survey reported that they perceived a positive impact on their work-life balance thanks to the new work time reorganization. Once the pilot data becomes available and the 2024 and 2025 results can be compared, it will be possible to assess whether the reorganization also had an impact on production workers' perception of organizational justice, reducing the treatment gap between them and white-collar employees.

5.2. *Shared parenting and family policies*

A second area of participatory practices aimed at equity concerns support for parenting and family life. At Lamborghini, the union and the company have used integrative agreements to build an advanced system of family welfare and work-life balance, often anticipating national legislation. The most innovative element of these negotiated measures lies in giving back time to workers to balance professional and private commitments, accompanied by appropriate financial support. For example, as early as the 2015-2017 integrative agreement, three days of paid paternity leave were introduced – in addition to what is required by law – and five unpaid days per year for child illness up to the age of 12. Subsequently, the parties further extended these provisions: today, Lamborghini significantly supplements the parental leave allowance provided by INPS, ensuring new parents greater financial support than the legal minimum. These measures directly address structural inequalities such as the 'motherhood penalty' and gender stereotypes: on the one hand, by encouraging co-parenting (fathers are supported in sharing childcare responsibilities through increased paid leave), and on the other, by offering working mothers' conditions that allow them to return to work without career penalties. The joint attention of the company and the union to these issues is also reflected in their commitment to raising internal awareness, promoting parenting as a valued component of professional development within the company. Another crucial aspect is the inclusion of vulnerable groups, which adds a dimension of real equity: the most recent agreements provide more favorable conditions for employees with particularly demanding family situations – for example, additional leave for single parents or those with children with disabilities, extended leave and part-time options for those caring for non-self-sufficient relatives, financial support for family care, and more. By recognizing the specific needs of these groups and designing tailored protections, the social partners have pursued

the goal of enabling all employees to reconcile work and private life more equitably. These innovations negotiated years ahead of the national debate – demonstrate how an equity-based approach in industrial relations can effectively address initial inequalities, rebalancing opportunities for those in disadvantaged positions.

5.3. *Diversity & inclusion policies and cultural change*

Finally, a broader reflection is proposed on Diversity, Equity & Inclusion (DEI) policies as they intersect with collective bargaining. Perhaps the most significant feature is precisely this integration: the issue of inclusion is not confined to unilateral initiatives by the Human Resources department but is shared at the bargaining table, discussed, and codified in agreements. This approach prevents DEI from remaining rhetorical and instead ensures concrete resources and accountability. A clear example is the reorganization of shifts, which was conceived with an inclusion-oriented perspective. On a broader level, the Social Innovation Working Group has served as a participatory governance tool for inclusion. In this shared laboratory – composed of HR professionals, RSU representatives, and specialists – inclusion projects are discussed and monitored, survey results are shared, and new initiatives are co-designed. The group has functioned as a driver of social innovation, aligning DEI projects with the real needs of the workforce. Among the implemented projects, some have had a particularly transformative impact on corporate culture – for example, the introduction of Italian Sign Language (LIS) training within the company, aimed at raising awareness among colleagues about communication with deaf individuals, breaking down communication barriers, and tangibly demonstrating a commitment to disability inclusion. Company-wide training on unconscious bias has also played a key role in fostering broader cultural change: by encouraging more inclusive practices, the training has helped employees become aware of how biases can influence their work, relationships with colleagues, and everyday dynamics. Overall, these DEI projects – some of which were planned and implemented with union involvement – have had visible and positive effects: increased awareness, the creation of internal support networks (e.g., employee communities), and a clear signal that inclusion is a shared value. The very fact that these initiatives are enshrined in agreements with the RSU elevates D&I to a

'serious' and collective issue, making it an integral part of the company's governance system.

6. *Data analysis*

To assess how the DEI policies adopted by the company are perceived, reference can be made to the Inclusion Survey, which is administered annually to all employees. The results show positive trends in parallel with the implementation of the measures described above.

The surveys conducted in 2025 and 2024 (after the signing of the new integrative agreement at the beginning of the year) were taken into consideration. The first notable finding concerns the participation rate, which increased between 2024 and 2025. In addition, the inclusion index – i.e., the overall score reflecting the perception of inclusion within the company – also rose in percentage terms. This increase in both engagement and overall perception of inclusion is a significant indicator, suggesting that the actions implemented during the intervening period – including those introduced by the agreements (e.g., reorganization of working hours, enhanced reconciliation policies, and DEI projects) – were positively received and contributed to improving the internal climate.

Specifically, the survey investigates three different dimensions: the first relates to the individual dimension of the employee, assessing whether they feel they can be authentic at work and whether they experience a sense of belonging to the company. The second dimension concerns the team, focusing on psychological safety in expressing oneself and the inclusive behaviors adopted by colleagues. Finally, the third dimension pertains to the organization, asking whether company processes are perceived as fair by employees and whether an inclusive culture is truly present within the company. Although all dimensions showed positive and growing results compared to the previous year, it is particularly interesting to note that the dimension with the most significant percentage increase was the one related to the organization and its processes[39]. This leap likely reflects the tangible

[39] Inclusion Survey Automobili Lamborghini, 2024-2025: The survey on the topic investigated the organization and business processes in a general way, without asking a specific question about the elements of work organization introduced with the 2024 Company Bargain.

benefits of the initiatives described (more equitable schedules, new welfare policies, etc.), suggesting that these measures have helped make internal processes appear fairer in the eyes of employees.

Analyzing differences in perception among various employee groups, the most relevant findings concern gender and job classification, which offer interpretive insights. In general, men and women report very similar levels of inclusion, indicating that equal opportunity policies are perceived as equitable across genders. The situation is different, however, for blue-collar production workers, who show a slightly lower inclusion index compared to their white-collar colleagues. This suggests that, although they benefit from the new measures, production workers perceive a comparatively smaller improvement in their autonomy and influence. Overall, these variations indicate that, while there is broad cross-sectional support for the model (no group reports low inclusion scores), there are still areas where efforts should be focused to close the perceived gap.

It is important to note that these climate data also have inherent limitations. First, since the surveys are voluntary, the results may be affected by participation bias: for example, more engaged or satisfied employees are generally more likely to respond to the questionnaire, while more critical voices may go unrepresented. Moreover, because the survey is voluntary, the response rate does not cover 100% of the company population. Second, surveys measure subjective perceptions, which do not necessarily correspond to 'objective' changes in phenomena, whether positive or negative. For this reason, the data should be interpreted alongside other organizational indicators. These limitations do not diminish the value of the evidence collected but rather suggest a degree of caution in interpretation.

7. *Discussion*

The Lamborghini case allows for broad theoretical and practical implications. On an academic level, the findings confirm – and at the same time enrich – what has been highlighted in the literature regarding the positive role of industrial relations in the field of Diversity, Equity & Inclusion (DEI). Numerous studies suggest that the active involvement of workers in decision-making processes improves the organizational climate and perceived well-being; the Lamborghini experience provides a concrete

example of this dynamic: structured participation, supported by inclusive bargaining, has translated into measures that have effectively reduced inequalities and increased satisfaction. In particular, Lamborghini demonstrates the complementarity between business performance and collaborative industrial relations, in line with the views of authors such as Hirschman and Gallie on the link between organizational voice and worker engagement/motivation. At the same time, the case pushes beyond some traditional positions: in the typical Italian framework, DEI initiatives have often been considered the exclusive domain of HR functions, while collective bargaining was expected to focus primarily on wages and standard protections. The case study presented here breaks out of this dichotomy, showing that industrial relations can be the driving force behind inclusion and sustainability policies, expanding company bargaining to encompass the individual and their needs, rather than limiting it to the management of the employment relationship. In this sense, the case shifts to the classical paradigm: DEI policies are no longer external to social dialogue but are integrated into negotiations oriented toward worker well-being.

The original contribution of this study lies in documenting how the concept of equity can be made concrete, stable, and measurable within an organizational model. Through in-depth document analysis combined with the examination of employee perceptions, the study illustrates a real case in which equity – understood as attention to diverse needs and the reduction of inequalities – has become a guiding principle codified in corporate governance. This enriches the theory of participatory industrial relations by highlighting the importance of considering not only economic outcomes but also socio-organizational ones. In particular, the analysis shows how typical industrial relations tools (assemblies, bilateral committees, integrative bargaining) can be used to promote inclusion and reconciliation, expanding the traditional function of bargaining. This provides the literature with a concrete case of impactful 'negotiated participation,' a concept that had been theorized but rarely observed in practice in Italy. Furthermore, the paper's integrated approach – which combines historical analysis of contractual texts with internal qualitative and quantitative data – constitutes a relevant methodological contribution, offering the opportunity to study from within how social partners experience and perceive the participatory process.

The Lamborghini experience shows how an industrial relations system based on a participatory model can become a strategic resource for

both the company and its workers, provided it is built over time, adapted to the context, and nurtured daily. It is not a 'pure' or mechanically replicable model: it is a hybrid system, born from fertile ground but one that has required – and continues to require – a constant investment in culture, trust, and shared responsibility. For HR departments, strategic collaboration with trade unions can become a competitive advantage: involving workers in the design of organizational solutions and welfare policies improves both the acceptance and effectiveness of these measures. Such an approach implies a significant cultural shift: management must recognize the union as a partner in value creation, sharing information transparently and respecting the rules of engagement. As stated in a management interview: "For dialogue to be effective, it must be on equal footing: without information sharing, it is impossible to build a shared synthesis" (Manager Interview). This does not mean relinquishing corporate leadership but rather exercising it inclusively: decisions must be aligned with values and respectful of people, because only by involving people can the best performance be achieved.

From the union's perspective, the participatory system has represented a path of collective growth. As one RSU delegate emphasized, "participation has been a structured process, a compromise that does not exclude conflict but channels it into constructive forms." In a context like Italy, where union culture has historically been rooted in confrontation, participation has required a shift in mindset: "in the past, we would go on strike; today, we sit down and talk." This does not mean that conflict has disappeared, but rather that it has been transformed into ongoing dialogue, where differences in interest are addressed through negotiation rather than rupture.

The system has also strengthened the role of the union delegate, who "is no longer just a representative, but a respected interlocutor, recognized by both workers and the company." This evolution was preceded by necessary specialized training to acquire technical and managerial skills (including sessions with the German union). Participation has helped build an image of the union as a constructive actor, capable of proposing solutions and not merely making demands. As some delegates have noted, "the participatory system alone is not enough: we need a strong, rooted union, capable of speaking to workers and renewing itself in language and methods." The model and the construction of a stronger union are not without limitations. Some delegates point out that "there is no such thing as 100% trust between

the parties, and perhaps there never will be: it's right that a balance of power remains." Others warn of the risk that participation may be misunderstood or exploited, or that it may lose touch with the everyday reality of work. But all agree on one point: the system has brought widespread well-being, a more relaxed atmosphere, and greater accountability.

From the company's side, the system has brought tangible benefits. Union involvement has made it possible to build decisions that are more robust, shared, and sustainable over time. As one manager put it, "participation simplifies difficult things, but it can also make simple things more complex." It is a system that requires time, dialogue, and experimentation. But it is precisely this gradual approach that allows for testing solutions, gathering feedback, and adjusting courses. The introduction of experimentation as a bargaining practice – for example, in flexible working hours for blue-collar workers – has been one of the most significant innovations: "you don't just sign an agreement and stop there; you test it, measure it, and refine it".

Another distinctive element has been the investment in joint training. Workshops, shared learning paths, and moments of dialogue outside the bargaining table have helped build a common culture and overcome mutual prejudices. "Participation is demanding," noted an HR manager, "but it's also a system that creates value. It's not just about dividing a pie, but about baking a bigger one together." Training has helped build trust between the parties. "Participation can start at the top, but it must be embraced by everyone. Middle management has enormous responsibility. The union must be willing to take risks and, when it holds the upper hand, not exploit it: we prefer to involve and listen, initiating a dialogue based on trust. Daily experiences, over time, consolidate this trust" (RSU Interview, 2023). In other words, mutual credibility is built through consistent behavior over time: the union uses new participatory tools responsibly (without abuse or extremism), and the company honors its commitments, avoiding punitive or delaying tactics.

What makes the Lamborghini model particularly interesting for future participation policies is its ability to structurally integrate inclusion. Participation is not an end in itself but has become, over time, a vehicle for promoting equity, well-being, and the recognition of diversity. As one union delegate observed, "participation is a form of enrichment in everyone's life, because it allows us to achieve results that truly improve the quality of working life."

In this context, inclusion is not just a stated goal but a daily practice. Measures supporting parenting, disability, generational and cultural diversity, as well as reconciliation policies and awareness projects, are the result of ongoing dialogue between the parties. The union has become a spokesperson for new demands, while the company has confirmed that "decisions must be aligned with values, respectful of people, and, above all, effective".

This synergy has generated an environment in which workers feel actively involved in change. "Employees don't feel like numbers, but part of a project," said one delegate. "The well-being experienced in the company is perceived as something we helped build." Participation, therefore, not only improves productivity but also strengthens the sense of belonging, trust, and internal cohesion.

For HR departments, this implies a paradigm shift: it is no longer just about managing personnel, but about co-designing with them. For unions, it means taking responsibility for contributing to decisions, moving beyond a purely adversarial logic. For public policy, finally, the Lamborghini case demonstrates that a participatory and inclusive system is possible even in the absence of national legislation, provided that the cultural and relational conditions allow it.

As one union representative put it: "Participation means blending together; it's not about one person in one place making the difference. It can start at the top, but it must be embraced by everyone." And as a manager reminded us: "Industrial relations and organizational performance must collaborate. They are not two separate worlds, but two dimensions that must grow together."

The Lamborghini model is not easy to replicate, but it shows that participation and inclusion can coexist and reinforce one another. The case study suggests that a participation system is achievable even without dedicated legislation[40], if the parties are willing: this confirms what scholars such as Treu and Caruso have theorized about the need for greater willingness to converge on the part of companies and unions to implement Article 46 of the Constitution on cooperation in management. Secondly, the integration of inclusion and well-being objectives into bargaining can become a model of participatory sustainability governance elsewhere as well: institutions and

[40] L. 15 maggio 2025 n. 125.

social partners should consider company-level bargaining not only as a tool for conflict, but also as a platform for social innovation.

In conclusion, the central theoretical insight guiding this study is that organizational equity arises from a virtuous cycle of dialogue and action: first, the company listens to the needs and concerns of workers, collecting data (e.g., internal surveys) and giving voice to employee representatives (employee voice); second, it discusses these needs in participatory and bargaining forums, involving both the union and relevant technical experts (e.g., bilateral committees on topics such as working hours, welfare, training); third, it jointly decides on interventions and solutions, which are then implemented and monitored over time. This process shows how well-designed and sustained participation can transform the workplace into a complex inclusive system that generates well-being, equity, and competitiveness.

Abstract

This paper examines how industrial relations can function as a structural driver of organizational equity, through an in-depth case study of Automobili Lamborghini. Drawing on document analysis, participant observation and semi-structured interviews, the study shows how a mature participatory model, characterized by continuous information-sharing, consultation, and second-level collective bargaining, enables the translation of Diversity, Equity and Inclusion (DEI) principles into concrete, measurable organizational practices. The findings illustrate that equity emerges not from voluntary HR initiatives alone, but from negotiated processes capable of reshaping working time, supporting shared parenting and incorporating inclusion into corporate governance. The Lamborghini model demonstrates how collective bargaining can institutionalize equity as a regulative device, reducing structural inequalities and enhancing organizational justice. The study contributes to the literature by showing that participatory industrial relations can act as an infrastructure for fair organizational transformation.

Keywords

Industrial relations, Participation, Organizational equity, Collective bargaining, Work-life balance.