

## A she-cession? Exploring labour policy responses to COVID-19 and their impact on women's right to work in Europe

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**Abstract:** *Women's right to work in Europe has been disproportionately affected by the ongoing COVID-19 pandemic. This article explores how and to what extent certain European countries have developed labour policy responses reflecting a feminist human rights preparedness during the pandemic's first two years. The impacts of the policies on women's right to work in Italy, Portugal, Ireland and Germany are examined under critical policy analysis (CPA) methodology and from a human rights-based approach. Ultimately, it is argued that these states failed to immediately address the disproportionately gendered impacts in the labour market. Across all case studies, the analysis identifies a shortfall in protection for certain categories of women which has challenged the fulfilment of their right to work and left them in a state of 'she-cession'. As a result, previous structures and tendencies defining the roles of women in society have been reinforced. In light of such unpreparedness, policy recommendations are elaborated upon from a feminist human rights perspective, in which attention is given to: intersectionality; dynamics of social hierarchies and power structures affecting access to rights; equal participation in policy decision-making; availability of data on the impact of states' ongoing responses; and engagement with relevant stakeholders to monitor and ensure women's enjoyment of the right to work.*

*Key words:* COVID-19; women; right to work; labour policies; intersectionality; Europe.

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## 1 Introduction

Women across Europe have been more deeply affected in their working lives by the COVID-19 pandemic than have their male counterparts, and affected in different ways (UN Women 2021). The European Parliament has highlighted the following issues: women are more at risk of contracting the virus as they are disproportionately represented in frontline work and essential services; wages in many female-dominated sectors are low; 'horizontal and vertical labour market segregation in the EU is significant, with women over-represented in less profitable sectors'; and 'women are more likely to be in temporary, part-time and precarious employment than men' (EP 2021, paras C, G, H, I). Correspondingly, scholars have argued that women are disproportionately represented in low-wage jobs and the informal economy (Bateman and Ross 2020), and experience an unequal burden of care labour, within a context of pre-existing structural discrimination (Del Boca et al 2020; Lokot and Bhatia 2020). Such trends may contribute to the 'feminisation of poverty' (Wenham 2020).

This article explores how and to what extent certain European countries have developed labour policy responses reflecting a feminist human rights preparedness during the first two years of the pandemic. Italy, Portugal, Ireland and Germany have adopted an array of COVID-19 related policies to mitigate its impact, but the short-, medium- and long-term consequences of such policies upon women's right to work remains unclear. These states have been chosen because of their diverse socio-political structures and contexts. This contribution aims to investigate the impact of COVID-19 related labour policies on women's right to work in Europe from a feminist perspective. It focuses on female unemployment rates, compensation policies for unemployed or partially employed women, and schemes to ensure the equal distribution of care duties. This is instrumental in identifying the shortcomings of responses that fail to consider human rights or the intersectional character of gender inequalities, and thus in developing recommendations that address these as caused or exacerbated by the pandemic in the workplace and beyond.

This research is conducted through a case-study method grounded in qualitative approaches, which seeks to explain contemporary social phenomena through 'how' and 'why' questions (Yin 2003). The utilised data originates from a variety of sources, comprising genres such as policy documents, official governmental statements, press briefings and NGO reports. Analysing a wide array of data sources allows for 'triangulation' and adds data credibility, as sources can be converged in the analysis process to identify trends and patterns in discourse (Baxter and Jack 2008). In order to operationalise the four case-studies, the theory and tools of critical policy analysis (CPA) are utilised from a feminist perspective (Olesen 2005, 236). This allows for the exposure of inconsistencies between what policy says and does in relation to gender- and power-based relationships in society.

Some fundamental considerations of CPA are employed to explore the research questions. Accordingly, what the state governments intended to achieve with their COVID-19 related labour policies is compared with how those policies have been experienced by women in relation to their right to work. How such policies have been developed since the outbreak of the pandemic, and any roots that they may have in responses to previous crises, are partially highlighted through a gendered lens. Policy implementations determining which women 'get what, when and how' are considered. The broader impact of policies upon the societal relationship between privilege and inequality is then considered in order to address their larger ripple effect of reinforcing dominant power structures. Moreover, the case-study and CPA methodologies are integrated with a feminist human rights-based approach to women's employment and labour relations (Agapiou-Josephides 2021), entailing certain human rights principles, standards and norms (e.g. participation and inclusion; non-discrimination and equality; accountability; interdependence and interrelatedness) and looking at how they have been (or should be) enshrined in the elaboration and implementation of such policies.

The paper is divided into three sections. Firstly, international legal, normative and policy frameworks on women's right to work are reviewed, considering related state obligations in times of COVID-19 in view of relevant instruments and policy documents. Secondly, states' COVID-19 related labour policies and their impact on women's right to work in Italy, Portugal, Ireland and Germany are analysed under the aforementioned methodology and approach. Thirdly, concluding remarks are articulated on the case studies and beyond, reflecting on the larger picture of women's right to work in Europe during this pandemic. It is argued that these states failed to immediately address the gendered impact in the labour market. Across all case studies, gaps in protection are identified for certain categories of women, especially those in marginal employment and those with children, challenging the fulfilment of their right to work, thus leaving them in a state of 'she-cession'. This term was coined by C. Nicole Mason (an alternative coinage, 'femcession', is a combination of 'female' and 'recession') to highlight the pandemic's disproportionate impact on women (Andrews 2020). In light of such unpreparedness, policy recommendations are elaborated from a feminist human rights perspective.

## **2 Legal, normative and policy frameworks relevant to women's right to work**

### **2.1 International level**

In providing a comprehensive elaboration in articles 6–8, the International Covenant for Economic, Social and Cultural Rights (ICESCR) affords women the same level of protection as men by extending the right to work to 'everyone'. The right to work has an individual and a collective

dimension, as laid out by the Committee on Economic, Social and Cultural Rights (CESCR 2006, paras 2, 6). The latter dimension ensures one's right to form and join trade unions. The former includes the individual's right to earn their living, to choose their work freely, and to enjoy just and favourable conditions of work. However, it does not confer an absolute entitlement to employment (CESCR 2006, para 6). It rather requires state parties to undertake steps to interdependently ensure accessibility, availability and acceptability of employment in accordance with the principle of progressive realisation (CESCR 2006, paras 12, 19). Regardless of economic constraints, state parties have the immediate obligation to respect the principle of non-discrimination, in order to ensure equal protection of employment (CESCR 2006, para 19). Employment is required to be decent work, which presupposes respect for the worker's fundamental rights (CESCR 2006, paras 7–8).

Article 7(a)(i), referring explicitly to women, highlights the importance of fair wages, equal remuneration and the guarantee of equal conditions of work to those enjoyed by men. States are required to ensure women's favourable work conditions, including freedom from economic exploitation and access to paid maternity leave (CESCR 2016, para 6). This right also extends to unpaid (women) workers employed in the informal economy, who are often not covered by the protective framework of the International Labour Organization (ILO) or by national policies (CESCR 2016, para 47(d)). In its first statement on coronavirus, CESCR considered the pandemic's effects on the work conditions of certain categories of workers and the severe disadvantages for precarious workers in the 'gig economy' and the informal sector, and for domestic workers and informal traders (CESCR 2020, para 5), explicitly referring to women in regard to their disproportionate burdens of caring for children at home and for sick or older family members in lockdown or quarantine, which 'deepen gender inequalities' (para 8).

Additionally, under article 3 women and men enjoy equal protection of their rights as set out in the Covenant and thus cannot be discriminated against (CESCR 2005, paras 1, 10). Therefore, state parties have to ensure women's equal enjoyment of the right to work not just in law but in practice (CESCR 2005, para 23), with far-reaching consequences. For example, as part of their duty to fulfil, states have to implement an employment policy aimed at overcoming unemployment and underemployment while ensuring that the measure is non-discriminatory and equally protects the employment of women and marginalised groups (CESCR 2005, para 26). This is in line with article 11 of the UN Convention on the Elimination of all forms of Discrimination against Women, recognising women's inalienable right to work and requiring state parties to 'take all appropriate measures to eliminate discrimination against women in the field of employment' to ensure the same rights, including the same opportunities, remuneration and protection.

Early in the pandemic, the ILO identified women among the groups disproportionately affected (ILO 2020a, 6, 14), and emphasised that its 2017 Employment and Decent Work for Peace and Resilience Recommendation No. 205 (para 8g) calls for applying a gender perspective in all crisis response design, implementation, monitoring and evaluation activities. Significantly, ILO Convention 168 (1988), in articles 7–9, calls on states to ‘promote full, productive and freely chosen employment’ by measures such as employment services, vocational training and guidance, with special programmes promoting additional job opportunities and employment assistance for disadvantaged persons including women. Focusing on the non-discrimination principle, article 2 of ILO Convention 111 (1958) and the Declaration on Fundamental Principles and Rights to Work (1998) call on states to design national policies that promote equality of opportunity and treatment in employment and occupation. This entails a non-discriminatory access to employment (ILO 2007, 15–16). Notably, the elimination of discrimination is enshrined in the multidimensional concept of decent work, which involves safe working conditions, protection against unemployment, equal pay, social security, and trade union-related rights (ILO 1999; Hepple 2001; ILO 2007, 47). This concept has been connected with gender equality as a prerequisite for progress (ILO 2008). Gender equality can be reached through offering equal opportunities, participation and treatment, while promoting a more balanced sharing of family responsibilities and investments in the care economy (ILO 2019, section 2). Accordingly, states should implement integrated, inclusive and transformative policies and measures that comply with international labour standards (ILO 2020b, 7). In claiming a gendered approach to the issues which have arisen during the COVID-19 pandemic, the ILO offers guidance on how to develop gendered labour policy responses: states should promote the creation of jobs for the equal benefit of women and men, invest in universal care policies to prevent the unequal distribution of care responsibilities, ensure women’s access to leading positions, and ensure the dignity and safety of all women in the labour market (ILO 2021).

## **2.2 Regional level**

The European Convention on Human Rights (ECHR) does not explicitly protect the right to work, but certain principles underpinning that right have been identified by the European Court of Human Rights (ECtHR), namely the principles of dignity, self-realisation and non-domination (Mantouvalou 2014, 314). Explicitly, in article 1 of the European Social Charter, the inclusive ‘everyone’ guarantees women’s right to work equally to that of men. Subsequent provisions protect the rights to just working conditions, safe and healthy working conditions, fair remuneration for a decent standard of living, freedom of association of workers and employers, and collective bargaining. Significantly, article 20 guarantees ‘the right to

equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex'. It requires states to promote gender mainstreaming (which has been further recommended by the Council of Europe Committee of Ministers Recommendation No. R (98) 14). Additionally, article 20(d) imposes positive obligations to tackle vertical gender segregation in the labour market.

At the European Union (EU) level, provisions encompassing the right to work in relation to women are contained in its constitutional treaties, but the most comprehensive provision is found in the equally binding Charter of Fundamental Rights of the European Union (CFREU). Article 15 CFREU enshrines two dimensions of this right (Ashiagbor 2014). In paragraph 1, a wider dimension enjoyed by 'everyone' is the right 'to engage in work and to pursue a freely chosen or accepted occupation'. In paragraph 2, a dimension interacting with the personal freedoms in articles 26, 45, 49 and 56 Treaty on the Functioning of the European Union (TFEU) addresses 'the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any member state'. No explicit reference is made to full employment or a state's duty to provide employment (Mantouvalou 2014). Articles 21 and 23 CFREU contemplate the principles of non-discrimination and equality between men and women 'in all areas, including employment, work and pay', which 'shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex'. Also article 16 of the Community Charter of the Fundamental Social Rights of Workers (referred to in the Preamble of Treaty on European Union (TEU) and article 151 TFEU) elaborates on equal treatment for men and women as regards access to employment, remuneration, working conditions, social protection, education, vocational training and career development, adding that 'measures should also be developed enabling men and women to reconcile their occupational and family obligations'. Taken together, these normative developments represent a relevant framework to be used by the EU and its member states when developing employment policy (as a component of social policy) that needs to consider a gendered approach.

Moreover, the EU is competent to coordinate employment policies (article 5(2) TEU, articles 146–150 TFEU) and it has to promote a 'high level of employment' (article 9 TFEU). The member states and the EU have joint competence regarding the social policy of the Union (articles 151–161 TFEU), which is primarily the responsibility of member states, while certain aspects are a shared competence with the EU (article 4(2) (b) TFEU). Its legislative action is in fact limited under articles 153(1) and 155. To achieve the policy objectives in article 151, the EU shall support and complement member states' actions on the 'equality between men and women with regard to labour market opportunities and treatment at work' (article 153(1)(i)). The European Commission encourages cooperation between member states and facilitates the coordination of their actions

regarding 'employment' (article 156(1)). Its 2021 report on 'Gender Equality in the EU' and its launch of a 'Gender Equality Strategy Monitoring Portal' are noteworthy. In discussing how to create a thriving gender-equal economy (European Commission 2021b, 21–26), it addresses the impact of COVID-19 on women's participation in the labour market, the gender employment rate, segregated labour markets and undervaluation across different sectors of the economy, the need to close gender gaps in pay and pensions, and the need to improve work-life balance and narrow the gender care gap. Significantly, some EU directives already substantiate the right to decent work by paying closer attention to gender equality and labour law (2006/54/EC, 79/7/EEC, 86/378/EEC, 2010/41/EU, 2004/113/EC, 92/85/EEC, (EU)2019/1158, 97/81/EC, (EU)2019/1152).

The European Pillar of Social Rights (EPSR) (European Commission 2017) provides a compass for addressing existing challenges by requesting, in Principle 2, 'equality of treatment and opportunities between women and men' in their participation in the labour market, terms and conditions of employment, career progression, and right to equal pay. On this basis, the Gender Equality Strategy 2020–2025 meaningfully includes the following among its key objectives: challenging gender stereotypes; closing gender gaps in the labour market; achieving equal participation across different sectors of the economy; addressing the gender pay and pension gap; and closing the gender care gap (European Commission 2020, 6, 7, 9, 10, 11). Some of the proposed concrete actions deserve attention too: launching an EU-wide awareness campaign against gender stereotypes; introducing binding measures on pay transparency by 2020; ensuring that member states transpose and implement EU-rules on the work-life balance of women and men, as well as promoting equal uptake of family leave and flexible working arrangements; and improving access to childcare services through investments and the adoption of a Child Guarantee (European Commission 2020, 6, 7, 8, 11, 12). Positively, intersectionality is recognised as a horizontal principle for the strategy implementation, thus addressing the different ways in which gender-based discrimination is intertwined with other discrimination based on the personal characteristics or identities of women and girls. This strategic vision is entrenched in the EPSR Action Plan (European Commission 2021a, 10), which sets 'employment' as one of the areas for the 'three EU headline targets' and sets significance on an aim to 'at least halve the gender employment gap compared to 2019' in order 'to progress on gender equality and achieve the employment target for the entire working-age population' (of at least 78 percent) by 2030.

In this context, the aforementioned EP resolution highlights the connection between COVID-19, the economy, the recovery and the gender impact (EP 2021). Paragraph 23 calls for EU institutions to consider the disproportional effects of this crisis on women's socio-economic sphere (including their income and employment rate), resulting in more profound inequalities and discrimination in the labour market, and calls for recovery

programmes to incorporate a gender perspective, gender budgeting and ex-post gender impact assessments, along with ‘a chapter with targeted actions to advance gender equality as part of the national recovery and resilience plans, developed in cooperation with national equality bodies’. The need ‘to re-examine the nature and location of work after the crisis’, and ‘for provision of and access to affordable quality childcare services’ is emphasised (para 24), encouraging ‘investment in care ... for ensuring gender equality and women’s economic empowerment’ (para 26). States are urged to introduce incentives for men ‘to take up flexible working arrangements’ and to fully transpose and implement the EU Work-life Balance Directive 2019/1158, but also to address work-life balance deficiencies caused by COVID-19 (para 27). The Commission and the member states are called on to examine the situation of single parents, of whom 85 percent are women, including the additional burdens in terms of working, schooling and caring (para 29). It emphasises that ‘equal opportunities and greater labour market participation among women can increase jobs, economic prosperity and competitiveness in the EU’, encouraging states to follow the Commission’s Guidelines for Employment Policies in the EU, having due regard to their national labour market models as affected by labour market segregation, precarious employment, pay and pension gaps (para 30). It stresses the challenges for the domestic and home care sector and its workers, calling on states to ratify ILO Convention 189 and ensure the eligibility of such workers for measures mitigating the financial impact of the crisis (para 32). It calls for ‘targeted measures for sectors predominantly employing women’, emphasising ‘the need for retraining and upskilling programmes for women to take account of shifts in the labour market as a consequence of COVID-19’ (para 33). It stresses that ‘intersecting and structural discrimination create additional barriers and challenges and negative socio-economic impacts for specific groups of women’, calling for an ‘intersectional approach to the crisis and post-crisis measures’ (para 38).

### **3 The impact of states’ labour policy responses to COVID-19 on women’s right to work**

#### **3.1 Italy**

##### **3.1.1 Labour policy responses**

The government failed to include women in the decision-making process during the drafting of the policies adopted as its initial response to this pandemic. It relied on the scientific advice of two task forces, one composed 90 percent of men and the other not including any women. Unsurprisingly, these policies did not adequately tackle either female unemployment or the equal distribution of care duties. A comprehensive labour response policy was not developed, but various decree-laws and laws addressing some relevant aspects were adopted.



Decree-Law 18/2020 (the so-called *Cura Italia*) established the COVID Redundancy Fund (*Cassa integrazione COVID*) to help companies in financial difficulty by relieving them of the cost of their unused workforce (article 22). In particular, workers are compensated with 80 percent of their income (under article 3 D.Lgs. 148/2015) during the period in which they are not able to work due to restrictions imposed for the pandemic. This economic support was supposed to last no longer than nine weeks, but was extended for twenty-seven weeks by Decree-Laws 34/2020 and 104/2020. The government changed hands in February 2021 and the new government approved the Budget Law for 2021 (Law 178/2020), providing incentives and full tax relief for those companies that either hire women who have been unemployed for at least twelve months or change the contracts of women employed in part-time jobs to full-time contracts (ISTAT 2020a, 107). In addition, Decree-Law 18/2020 adjusted parental leave to cope with the closure of schools and educational institutions (articles 23 and 25). Parents were alternately allowed to go on parental leave for fifteen days while receiving 50 percent of their salary. As an alternative, a baby-sitting bonus was provided to let parents slowly restart their businesses (Privitera 2020). Decree-Law 30/2021 extended the possibility of smart-working for parents or the parental leave (if work could not be carried out remotely), during the suspension of face-to-face classes, the child's covid-19 infection or quarantine period (article 2).

Finally, the recovery plan that Italy adopted in April 2021 promotes women's participation in the labour market by investing in female entrepreneurship and by enabling the reconciliation of work and family life through ensuring access to (better) childcare services and so reducing the burden of care duties (PNRR 2021, 46–47). Such reconciliation is promoted through the creation of 228,000 new places in public kindergartens (PNRR 2021, 232). Nonetheless, as the provision of adequate care services is considered instrumental for increasing the birth rate (PNRR 2021, 46), the government again reinforces the idea of valuing women only for their role as mothers. The plan elaborates a system of incentives for companies that develop policies oriented towards reducing the gender gap (career progression, equal pay, and maternity protection). In particular, it includes the so-called 'transversal clause' whereby companies accessing the Women Entrepreneurship Fund must hire women and pursue gender equality goals (PNRR 2021, 336). Notably, the plan is in line with the CESC's recommendation that Italy take effective measures — such as creating incentives for employers — to raise women's employment rate (CESC 2015b, paras 26–27). However, as highlighted by the director of gender policies of the Italian trade union CGIL, it provided incentives for companies that hire women but did not define the criteria for this process, such as the percentage of women to be hired in order to obtain the incentives (Camusso and Rizzi 2021).

Relevant ‘milestones’, ‘targets’ and ‘timeline for completion’ set in the EU Council’s approval of the assessment of this plan in July 2021 have already been taken into account by Italy (EU Council 2021c, 488–513). Its Budget Law for 2022 (Law 234/2021) in fact introduced a 100 percent tax exemption for hiring working women in the period 2021–2022, up to a maximum of 6,000 euros per year. It also activated the fund for family policies to implement organisational measures favouring mothers’ return to work after childbirth. It allocated additional resources to the fund supporting venture capital to reinforce investments for highly innovative female entrepreneurship projects. It directed 20 million euros for each of the years 2021 and 2022 to the Women Entrepreneurship Fund. It established a fund to finance measures favouring equal wages between men and women, with a budget of 2 million euros per year to be spent from 2022 onwards. It even adopted a tool to implement wage equality, for companies to certify the concrete measures taken by employers to reduce gaps in growth opportunities, pay equal wages for equal jobs, manage gender differences and protect maternity; companies will thereby be able to obtain a 1 percent discount (up to 50,000 euros per year) on their tax contributions.

### 3.1.2 The practice of such policies

In 2020 in Italy the chained volume measure of GDP decreased by 8.9 percent, recording one of the worst economic slumps in Europe (ISTAT 2021a, 1). More than 420,000 jobs were lost between February and December. The unemployment situation exacerbated the already existing gender gap: 99,000 out of 101,000 unemployed persons recorded in December were women. This trend is confirmed by analysis of the year overall, which shows that 312,000 women lost their jobs compared to 132,000 men (ISTAT 2021b, 3). Different elements contributed to the high rate of female unemployment: the Italian gender equality index was below the average European index (EIGE 2019), and Italy had one of the lowest rates of women’s participation in the labour market (Priola and Pecis 2020, 621).

The policy initially enacted to combat unemployment has been criticised. Although Decree-Laws 18, 34 and 104 of 2020 provide a redundancy fund to support workers facing economic difficulties due to the pandemic, several delays were reported by the monitoring council of the national institute of social welfare. By November 2020, 198.941 requests had still not been processed (INPS 2020b, 27). This has led to economic uncertainty and mistrust in the institutions. Moreover, the main sectors allowed to re-open for business in May 2020 were mostly occupied by men, although it is proven that women face a higher risk of not returning to the labour market (ISTAT 2020a, 116). Apparently, longer breaks from work (such as those resulting from the pandemic) increase the

probability of women being perceived as 'beginners'. Additionally, women who stop working are likely to carry more of the burden of care duties and invest less energy in searching for a new job. Given their higher risk of not returning to the labour market, the gender blindness of the cited decree-laws and their delayed implementation worsened the situation of women in this market by seriously harming their right to access work.

Prior to the pandemic, women aged between 25 and 44 carried out 70 percent of care work in families, so the distribution of housework was still far from equal (Privitera 2020). Only 57 percent of Italian mothers had a job, compared to 89.3 percent of fathers. Furthermore, 18 percent of women changed working schedules to comply with care duties, while only 3 percent of men made similar choices. During the pandemic, the situation has become even worse. The burden of housework and childcare for women has increased noticeably (Priola and Pecis 2020, 620). Many women have given up on their careers due to their domestic workload, 96.000 mothers have lost jobs, often had to take care of their children and could not reconcile jobs with private life (Save the Children 2021, 14). Even before the COVID-19 breakout, the national system was not providing adequate public services to ease the burden of family care on women, as only 1 out of 10 children could access public kindergartens, and in some regions less than 3 percent of children attended public day care (Save the Children 2019). Nonetheless, the adopted decree-laws did not offer valuable solutions to the unequal distribution of care duties. In fact, the parental leave and babysitting bonuses are established only for those parents who cannot work from home. Remote working is wrongly conceived as compatible with care duties, although in reality women often get burnt out by the combination of housework and job tasks. While women used to come back from work and deal with the housework before the pandemic, now they cannot separate these activities. This negatively affects their job performance (Save the Children 2020). Measures such as the provision of accessible and affordable childcare and long-term care services are crucial for the purpose of allowing women to enter, remain in, or return to the labour market (EU Directive 2019/1158, para 12). By failing to ensure the equal distribution of care responsibilities, the Italian government also failed to protect women's right to work.

The government ensured fragmentary protection and did not consider the importance of providing support to some particularly vulnerable categories of women. For instance, despite being a gravely affected sector during the pandemic, domestic workers (88.3 percent of whom are women) were excluded from accessing the COVID redundancy fund, resulting in a disproportionately negative effect (Melis 2019). Furthermore, most domestic workers (77 percent of caregivers and 69 percent of housekeepers) are migrant women (Fondazione Leone Moressa 2020), hence migrant workers have been more severely affected by the lack of

access to economic assistance. Moreover, the perspective of single-parent families has not been included in the legislative response concerning parental leave. This has been designed for families where one of the parents can interrupt work to comply with care duties, while the other one still receives their full salary. In contrast, single-parent families can encounter difficulties in ensuring a stable economic situation if they can only count on half of their salary. In Italy, 86.4 percent of single parents are women (ISTAT 2020b, 11), and by forgetting this category the government shows a gender-blind approach and underestimates intersectionality.

Most of the current problems result from the previously identified structural gender inequalities in the country: a disproportionately high unemployment rate among women; a high number of women leaving the workplace after childbirth and struggling to re-enter the labour market; the disproportionate amount of women engaged in part-time and low-paid jobs; and the gender wage gap in both the public and private sectors (CEDAW 2017b, para 37).

Overall, Italy's initial approaches to this crisis were inadequate. The then-government's exclusion of women from the drafting process of the labour response policies was not in line with ILO standards or the subsequent EP resolution (EP 2021, para 6). The policy under Decree-Law 18/2020 has only partially protected women's right to work, without addressing the needs of domestic workers —mostly women — or of single mothers. The government's failure to promote equal distribution of domestic and home responsibilities was not compensated by adequate measures to allow women to enter, remain in, or return to the labour market. On a positive note, the gender-centred labour policy under the PNRR follows the EP's recommendation (EP 2021, para 53) and its initial implementation has resulted in greater support for female workers. The further measures in the Budget Law for 2022 are promising. However, an intersectional approach considering the needs of different categories of women, especially those working in the informal sector, must be improved.

## **3.2 Portugal**

### **3.2.1 Labour policy responses**

Although women's exclusion from the decision-making process was not an issue in Portugal, the main labour and social policies that the government introduced before declaring the state of emergency on 18 March 2020 did not entail a gendered vision. At the core of the policy response was the Simplified Furlough (enacted in Decree-Law 10-G/2020), under which companies that demonstrate being affected by the crisis may reduce working hours or suspend work contracts, while employees were entitled to two-thirds of their gross salary (never being less than the national minimum wage attuned with the number of hours worked). In January 2021, under

Decree-Law 6-C/2021, workers became entitled to 100 percent of their gross salary up to a limit of three times the national minimum wage. Other fiscal and non-fiscal measures aimed at maintaining levels of employment and creating a safety-net for those who lost their jobs included the deferral of tax payments and social contributions (especially for small companies), credit lines to support company liquidity or the automatic extension of unemployment assistance, and the Social Integration Income (RSI) and Seniors Solidarity Complement (CSI) targeted at poverty relief (ILO 2020c, 12). The government has also extended the resources and powers of the National Labour Authority (ACT), enabling it to suspend dismissals when there is evidence of unlawfulness without waiting for a final court ruling, thus preventing the interruption of the worker's wages (ILO 2020c, 12).

Significant adjustments responding to a disproportionate impact on women's right to work were adopted only under Decree-Law 10-A/2020 (articles 21–22). After schools were closed under the state of alert (March 13, 2020), the right to justified leave of absence was granted to all employees who had to stay at home to care for children younger than 12 years old or other dependent persons. Under this Exceptional Family Support scheme, parents missing work would receive the equivalent of two-thirds of their gross salary, subject to a minimum equivalent to the minimum wage, and a maximum of three times the minimum wage. Due to the lack of an alternative, this measure was relied upon predominantly by women (more than 80 percent of the 201,000 beneficiaries in 2020) to preserve their access to work while caring for dependents (Martins 2021). During the second lockdown in February 2021, after pressure from stakeholders (namely social partners, the parliamentary opposition and the Portuguese Ombudsperson) to reverse the pattern of women staying home, the subsidy became 100 percent of the original gross salary for workers from single-parent families and families whose parents care for their children weekly and alternately; also, the remuneration was extended to individuals working from home.

From January 2021, Law 75-B/2020 introduced a specific subsidy for domestic workers who prove they have suffered a significant loss of income due to COVID-19, and whose adult family members do not each earn more than €501.16 per month. They receive two-thirds of the value lost, up to a limit of €501.16, although more general subsidies were also available. Among domestic workers, more than 99 percent of the requests to join the Exceptional Family Support scheme in the first four months of this pandemic were from women (GEP/MTSSS 2020), showing how this is still a very gender-based field of work.

Importantly, Portugal's recovery plan, submitted in April 2021 and approved by the EU Council in July 2021 (EU Council 2021d, 72), proposes a specific reform (to be completed by December 2024) on 'combating inequality between women and men' to promote equality in gender pay

and equal career opportunities, and to counter gender stereotypes and segregation in the choice of professional careers. This reform builds on existing laws on equal pay and on balanced representation in boardrooms.

### 3.2.2 The practice of such policies

The Portuguese labour market seems to present a particular example of the gender employment gap. In 2020 Portugal's gender employment gap was at a low 5.7 percent, and in 2019 it occupied the eighth-best position in all EU countries at 6.9 percent, far below the EU average (EUROSTAT n.d.). But despite the high female participation rate in the labour force, there was a high gender segregation of jobs, both horizontal (i.e., sector-related) and hierarchical (i.e., men over-represented in high-level jobs) (González 2014). This reveals the disproportionate exposure of women to COVID-19 risk through being over-represented in care and social work or overburdened with unpaid care (ILO 2020c, 9). Since the beginning of this crisis, the unemployment rate has been consistently higher for women. It stabilised in February 2021 at 6.9 percent, but was 6.7 percent among men and 7.0 percent among women (INE 2021). Although during the first wave of the pandemic women lost fewer jobs than men (2.2 million to 2.6 million), the number of hours worked suffered a greater drop for women than for men (29.5 and 18.8 respectively). Since that wave, women have also faced difficulties in re-entering the labour market, with unemployment among men rising by 0.8 percent and among women by 1.4 percent (Pereira 2021).

The aforementioned policy responses did not tackle any of these inequalities, mostly because they were not conceived to overcome such issues. As for the regime of Simplified Furlough (a central strategy in most European countries), 10,332 workers benefited from salaries under the lay-off scheme in Portugal in March 2021, in comparison to 1,052 in March 2020 (Segurança Social 2021), though public data on the percentage of women assisted are not available. The Ombudsperson received several complaints of delays from companies who did not receive the lay-off support on time (Provedor de Justiça 2021), so negatively impacting women, already more vulnerable in accessing work. Additionally, complaints were made from pregnant women who did not receive the real social support they are entitled to (Expresso 2021). This can be seen as a violation of the state's obligation to ensure access to paid maternity within women's right to work (CESCR 2016, para 6).

Nevertheless, the government was attentive to the issue of unequal division of unpaid care work within households. The adjustment in February 2021 to the Exceptional Family Support scheme is a good example of how public pressure from relevant stakeholders can have a role in creating a gender-based measure by the government, and in ensuring women's equal enjoyment of their right to work in law and in practice (in line with CESCR 2005, para 23). Notably, in 2018 Portugal adopted the

policy program 3 Em Linha to achieve a better work-life balance, which included measures (e.g., the enlargement of parental leave regimes, the strengthening of iGen 2.0, and the creation of different working schedules) that were praised as going even further than the EU Directive 2019/1158 (Ministério dos Negócios Estrangeiros 2020, 200).

However, there has been a lack of political will to design policies addressing the specific effects of the COVID-19 crisis on women's right to work. Looking at policy rhetoric, the gender dimension of unemployment and the right to work is almost absent from the discourse of Portuguese labour policies. In analysing all the communications from the Council of Ministers' sessions in which issues of labour, unemployment, enterprises and social security were presented from June 2020 to April 2021, it appears that gendered policies and the gender dimension of problems originating from each policy were only addressed in one communication on the Exceptional Family Support scheme, on 18 February 2021. Contrastingly, during a webinar organised by the Portuguese Presidency of the Council of the EU on 8 March 2021, the Minister of State for the Presidency Mariana Vieira da Silva affirmed that 'the impacts of this crisis will not be gender-neutral; they will affect men and women differently', concluding that 'it is fundamental for the European Union and the member states to look at gender equality as "an engine for recovery"' (2021Portugal.EU). The absence of a gender-oriented labour policy is not in line with the national political discourse aiming to achieve gender equality.

Overall, the Exceptional Family Support scheme to tackle the disproportionate impact on women of a leave of absence can represent a positive practice to follow. This reflects the EP's recommendation that the COVID-19 crisis should be an 'opportunity for men to become more involved in care responsibilities' (EP 2021, para N). Although the Simplified Furlough is gender-blind, it did develop a central role in the maintenance of female employment — but existing problems in its execution should be fully solved. In general, it is hard to assess the gendered impact of national labour measures as data are barely available. Their full effects are still yet to be produced, and only in the mid-/long-term will the Portuguese economy reveal itself to be (or not be) more gender inclusive. The government should keep track of data on the immediate impact of relevant measures and collaborate with stakeholders for a gendered impact assessment of labour policies during their elaboration and implementation.

### **3.3 Ireland**

#### **3.3.1 Labour policy responses**

There was no special policy addressing the protection of women's right to work in light of COVID-19 in Ireland. The only time women were explicitly addressed in relation to this pandemic was a special session

held by the Dáil (parliament), which is currently 77.5 percent male, for International Women's Day, in which the discernibly different impact upon them was highlighted (Houses of the Oireachtas 2021). Nonetheless, women were addressed by the inclusive formulation of the Irish schemes. The set of policies introduced by the government focused on wage subsidisation, tax and payment deferrals, grants and direct cost support as well as lending facilities (Kren et al. 2021). The most subscribed schemes deserve particular attention: the Pandemic Unemployment Payment (PUP) and the Temporary Wage Subsidy Scheme (TWSS) (later the Employment Wage Subsidy Scheme (EWSS)).

The PUP was announced on 16 March 2020, the day following the closure of the hospitality sector (Hick and Murphy 2021, 315). Prioritising administrative ease and a rapid roll-out, it was based on a one-page application and paid directly to affected individuals, with no household limitations. The payment was open to Irish citizens and migrants alike, irrespective of their immigration status. Though initially paid at a rate of 350 euros per week, four brackets were later introduced in which the amount received depended on one's pre-pandemic wages (Department of Social Protection 2021).

The TWSS was announced on 24 March 2020 (Hick and Murphy 2021, 316). It emphasised job retention, as the payment was conditional on employment being sustained, with payments made through the revenue system to employers and then administered to their employees. The scheme was accompanied by a suspension in existing redundancy legislation. It was introduced at 70 percent of the employee's net pay, which was later increased to 85 percent, and has a maximum payment of 410 euros per week (Revenue 2021a). In the Fiscal Stimulus plan of 23 July 2020, it was announced that the TWSS would be succeeded by the EWSS (Revenue 2021b). Employers whose turnover had fallen 30 percent were to receive a flat-rate subsidy for existing, new and seasonal employees. Additionally, new firms operating in impacted sectors are eligible for the scheme.

The schemes were considered generous due to the weekly rates being significantly higher than the existing weekly welfare rate for single people, and because they are equivalent to 100 percent of average take home pay in the low-paid sectors most affected by job loss (Coates et al. 2020). Furthermore, the schemes protect documented and undocumented migrant workers, as the government put a 'firewall' in place by prohibiting applicants' personal information being shared by the Department of Employment Affairs and Social Protection with the Department of Justice and Equality during COVID-19 (Migrant Rights Centre Ireland 2020). Though the PUP was closed on 8 July 2021 (McConnell 2021), it was reopened later in 2021 in response to the COVID-19 variants (Dwyer 2021).

Ireland's recovery plan, approved by the EU Council in September 2021 (EU Council 2021b, 30), contains measures (specifically the



provision of work experience, upskilling or reskilling opportunities) designed to address existing challenges in gender equality, and when expressing concern for the labour force it refers to the disproportionate impact of the pandemic on women workers. In particular, programmes such as Work Placement Experience and Solas Green Skills Action (to be implemented between 2021 and mid-2026) aim to provide impacted workers with 'the opportunity to gain experience, reskill or upskill to new areas that are experiencing growth and skill shortages' (Department of Public Expenditure and Reform 2021, 15). It also refers to employment levels disaggregated by gender and age and to the gender employment gap as key metrics to be used to measure Ireland's recovery efforts.

### **3.3.2 The practice of such policies**

Of those who availed themselves of the PUP scheme, a vertical statistical analysis of sex does not reveal too significant a difference in the percentage of male and female claimants (Central Statistics Office 2021). Nonetheless, in analysing when recipients applied to the scheme, women were more likely to have sought payments in the early waves of the pandemic — a pattern aligned to the sectoral disparities within the Irish labour market (Coates et al. 2020). In 2019, women accounted for 54 percent of the workforce in accommodation and food services, and 56 percent of these women were under 35 years of age. This pattern holds for those working in the four sectors collectively designated as severely impacted by the COVID-19 pandemic. Considering that the Irish government has consistently loosened restrictions in reverse order of their closure, the labour market recovery will take the longest to reach some of the most impacted sectors and the disproportionate types of workers they employ, namely young women. A similar pattern can be found in a breakdown of the sectoral recipients of the T/EWSS, with wholesale and retail trade accounting for the largest portion of claimants at 22.4 percent, and accommodation and food services together making up 11.6 percent which constitutes the third largest sector to benefit from the scheme.

Hence, though women made claims to the PUP and T/EWSS schemes somewhat equally to their male counterparts, the failure of these policies to address young women's disproportionate reliance upon them remains problematic. In Ireland, lessons from the financial crash in 2008 indicate that such a pattern may adversely affect the employment prospects of these cohorts once the containment measures are reversed, as women are more likely to remain excluded from the labour market (Coates et al. 2021). As the current COVID-19 policies are acting as substitutes for income, the disproportionate length of time that women have been claimants arguably means they lack the equal protection of employment guaranteed by provisions such as those of the ICESCR. Furthermore, the horizontal disparity within the labour market that has caused these women to be disproportionately affected remains unaddressed by the

Irish government's policy responses. This was an issue within the labour market that predated the COVID-19 pandemic and it remains a topic to be tackled under the obligations conferred on the state by article 20(d) ESC, among other international treaties. The CESCR's concluding observations (2015a: para 15) reminded the Irish government of said responsibilities to ensure the equal right of men and women to the enjoyment of all the rights set forth in the Covenant (article 3). Hence, Ireland's responses should have considered the disparity within the labour market during the implementation phase and ensured aspects encompassed in women's right to work. This necessity was raised by the European Parliament (EP 2021, para 23), however progress remains to be made by the government. Such failure of policy to address young women's needs has caused critics to argue that progress on gender equality has been reversed. This retraction has been labelled a 'she-cession', with the argument that these trends will leave conditions for women in the labour market at 2017 levels (Gleeson 2021) — the trends act as a barrier to targets set in the 2021 EPSR Action Plan to halve the gender employment gap in comparison to 2019.

There have been additional barriers to accessing the T/EWSS for those returning from maternity benefit (Hick and Murphy 2021, 321). Following their return to work, women who had not received a wage top-up on their maternity benefit from their employers did not meet the TWSS criterion that employees be on the payroll on 29 February 2020 (Wall 2020). Affected women were made unemployed as their employers were not in a position to pay their wage without the assistance of the TWSS. Not only did this lead political officials to call out the blatant discrimination against women, but organisations such as the National Women's Council of Ireland sought legal advice from the Irish Human Rights and Equality Commission about the failure to comply with obligations under Irish and international law (Dunphy 2020). Though in May 2020 the government agreed that barriers to accessing the TWSS for women returning from maternity leave would be lifted and the provision implemented retrospectively, the weeks of uncertainty for new mothers amounted to their discriminatory exclusion from the labour market (Martyn 2020). The initial lack of consideration and protection to ensure recently pregnant women's right to work disregards the state obligations under frameworks such as the Pregnant Workers' Directive 92/85/EEC. The CESCR (2015a: para 23) raised similar concerns, commenting that not all women workers are covered by the maternity benefits scheme. Hence, though the government did resolve the issue of access, these problems show the lack of attention given to the complexity of implementing the COVID-19 policies, particularly concerning groups facing pre-existing social barriers in their right to work.

Although general safeguards to ensure the right to work were implemented in Ireland, the impact of COVID-19 left young and pregnant women disproportionately vulnerable regardless of the PUP and T/EWSS schemes. Akin to the initial policy response, the programmes proposed in

the cited recovery plan are generic rather than exclusively and explicitly addressed to such impact. As was recommended by the CESCR (2015a), Ireland must promote gender equality by doing more to overcome the disproportionate representation of women in certain sectors of the labour market.

### **3.4 Germany**

#### **3.4.1 Labour policy responses**

Whilst Germany's National Gender Equality Strategy highlights the fact that the COVID-19 pandemic has made gender imbalances in the labour market visible (BMFSFJ 2020, 8), the employment policies with which the country has responded to the pandemic do not explicitly mention women. A study prepared on behalf of the Federal Ministry of Labour and Social Affairs has acknowledged that women are facing a higher employment and income risk than men during this pandemic (Bonin et al. 2021, 9). However, it concluded that there is no acute need for gender-specific response policies.

The general labour market situation for women has remained relatively stable, as during 2020 the German economy was more resilient than those of other European countries (IMF 2020a, 8). This resilience is attributable to the implementation of one of the largest economic stimulus packages in Europe, aimed at reducing the immediate and long-term effects of the economic setback (IMF 2020a, 9). The stimulus package introduced by the Bundestag, where at that time approximately one-third of the representatives were female, sets out measures such as the payment of short-term aid to companies and self-employed individuals, the extension of child sickness benefits, and tax relief for single parents (BMF 2021). In line with EP resolution (EP 2021), it includes major investments in the future such as the creation of childcare facilities. Germany's recovery plan, approved by the EU Council in July 2021, also includes financial support to expand childcare with the aim of creating 90,000 additional places for children and ultimately improving labour market inclusion of women and parents (EU Council 2021a, 42).

One central aspect of the stimulus package is the implementation of short-time work benefits (*Kurzarbeit*). It allows employers to avoid lay-offs by reducing the hours and pay of their employees, while the government provides partial compensation for the lost income (IMF 2020b). This compensation is available to German citizens as well as to recognised asylum seekers and people with permission to stay pending their residence. In response to COVID-19, this previously existing policy was adapted to provide broader protection. For example, the hurdles for businesses to profit from this policy were reduced (BMF 2021). Additionally, the compensation paid to workers was increased to 60–80

percent of the lost wage and to 67–87 percent for parents (BMF 2021). Previously in the 2008 financial crisis, the short-time work scheme had been successfully implemented to safeguard employment, serving as an example to many other European countries (IMF 2020b). The financial crisis mainly affected the German manufacturing sector, which consisted mostly of male, full-time workers (IMF 2020b), whereas the COVID-19 related crisis disproportionately affected service sectors consisting predominantly of female workers (Bock-Schappelwein, Mühlberger and Mayrhuber 2020, 1). Thus, the question arises as to what extent the short-time work scheme is suitable for securing women's right to work during this pandemic.

### 3.4.2 The practice of such policies

The employment statistics show that the short-time work scheme has successfully ensured employment during the current crisis, including women's employment. The extension of the possible funding period as well as the increase of benefits for workers with children can be seen as beneficial. However, some aspects of the short-time work scheme reinforce gender inequality, as the policy does not adequately consider the position of working women, particularly those who are married, in marginal employment, or who have children.

On a general level, the short-time work scheme reinforces the existing gender pay gap. The *Kurzarbeit* compensation is calculated on the basis of the previous net income, but can be topped up through industry-level collective agreements (typically found in local government, metalworking or the chemical industry). However, as fewer women are employed in industries that benefit from collective agreements, women are less likely to benefit from such increases (Cook and Grimshaw 2020, S220), resulting in comparatively lower compensation. In this sense, attention should also be drawn to the calculation of compensation for married women. Married couples have the option to choose tax brackets that decrease the net income of the partner with the lower income, thus typically the income of women, while placing the partner with the higher income in a more favourable tax bracket. While this is supposed to result in a higher total income for families, adverse income tax systems of this type have previously been criticised for reinforcing traditional stereotypes of women in the labour market (CEDAW 2017a, para 35(e)). As this tax system affects the net income of married women, they receive comparatively lower compensation through the short-time work scheme (Deutscher Gewerkschaftsbund 2020, 6). These two issues highlight the greater likelihood of women being in a position in which their compensation from the short-time work scheme is comparatively lower. As they contribute less to the family income, this can affect their bargaining position in the family and contributes to the persistence of gender inequality (Bonin et al. 2021, 9–10).

Another major issue is that women in marginal employment are not covered by the short-time work scheme. Workers performing a Minijob, which is a form of marginal employment, are exempt from social insurance obligations and, in turn, do not qualify for short-time work benefits (Hammerschmid, Schmieder and Wrohlich 2020: 5). Notably, more women than men work part-time or in Minijobs (Destatis 2020). As Minijobs are very common in the service sector, which was particularly hit by COVID-19, women are at an increased risk of unemployment without benefits (Bonin et al. 2021, 9). In the first months of the pandemic, almost twice as many women (-4 percent) than men (-2.2 percent) lost their Minijob (KBS 2020). This affects women's right to work in multiple ways — in the short term, but also within the larger picture of gender inequality. In light of the economic downturn, it is possible that women who lost their Minijobs will not be able to re-enter the job market quickly (IMF 2021, 22), or these women might not seek new employment if they decide to confront the additional care burden at home (Bonin et al. 2021, 14). In addition to the financial strain, such longer gaps in employment pose additional barriers to re-entering the labour market. Although there is no concrete data yet on the scope of the consequences of this gap in protection, it is arguable that the lack of protection indicates a lack of consideration for women's equal right to work under the ICESCR and the European regional framework.

Certain positive aspects of Germany's labour policy response can be identified. For example, the special situation of single parents was given consideration, as requested (EP 2021, para 29). Tax cuts for single parents and large investments in childcare infrastructure were essential steps to alleviate the pandemic impact and ensure equal opportunities in the future. However, despite the attempts of the National Gender Equality Strategy and the COVID-19 response package to address the compatibility of family and career life, the burden of additional care work, for example the compensation for school closures while working from home, was mostly borne by mothers (Kohlrausch and Zucco 2020, 5). Drawing the line between paid work in the home office and care work at home was not always possible due to the difficulty of organising external care options. COVID-19 has highlighted inequalities resulting from women's tendency to stop working or to resort to part-time work after giving birth, serving as a reminder that 'traditional' gender images remain. The need for reforms of Germany's social and tax policies to overcome gender segregation in the labour market, and to tackle the persisting high gender pay gap and poverty among older women, has already been emphasised (CESCR 2018, para 39). In September 2021, the government made some progress by granting a legal right to full-time day care for elementary school students beginning from 2026 onwards (Bundesregierung 2021).

While the aforementioned shortcomings in the labour policy response represent only a fraction of potential criticisms, they highlight the fact

that Germany failed to address the additional challenges posed to women's right to work by COVID-19. Whereas the Kurzarbeit scheme was successful in protecting general employment, including that of women, Germany disregarded the needs of certain groups of women, such as those in marginalised employment and working women with children, and did not adequately consider the financial outcomes for married women. As the pandemic progresses, a careful consideration of proposals such as reform of the taxation system and the Minijob-system is needed, along with the creation of employment models in which full-time employment of both parents is encouraged.

#### **4 Concluding remarks for a feminist human rights preparedness**

The analysed states introduced a variety of policies impacting women's right to work to different extents. The main initial measures were job retention schemes, namely the Italian Cassa integrazione COVID, the Portuguese lay-off scheme, the Irish T/EWSS and the German Kurzarbeit. However, reliance upon them varied, with Italy, Portugal and Germany making them central to their initial labour policy responses, while Ireland introduced theirs alongside the PUP. Mostly they did not entail any explicitly gendered vision and hence did not prove to be effective in safeguarding women's right to work. Germany and Ireland safeguarded general employment to a certain extent, but some groups of women experienced gaps in protection. Italy and Portugal had delayed responses to the disproportionate impact of the crisis upon women's employment, and their full implementation remains to be seen. The states' failure to immediately address such gendered impact—and thus to protect all equitably in their right to work—portrays how they were ill-prepared to apply a feminist human rights-based approach to the COVID-19 pandemic. In each of these countries, protection gaps can be identified for certain categories of women such as those in marginal employment or with children. In turn, this disproportionately challenged their right to work and thus resulted in a state of 'she-cession'.

This pattern has exposed and exacerbated the structural gender inequalities predating the pandemic. As stated early on by the UN Secretary-General, 'the pandemic is deepening pre-existing inequalities, exposing vulnerabilities in social, political and economic systems which are in turn amplifying [its] impacts' (UN Women 2021, 2). This is evident in the case studies, which align with global trends where women's right to work has been previously disregarded and hence less protected during the pandemic. Women consequently earn less, save less and are at greater risk of falling into poverty (ILO 2021). Their comparative capacity to absorb economic crises, such as that stemming from COVID-19, is limited (UN Women 2021, 4). Such a persistent marginalisation of women's rights illuminates the lack of consideration, originating from the traditional norms of women's role in our society, that their agency receives. Though

most of the discussed cases implemented largely gender-blind policies, those that did attempt to address women's right to work predominantly did so in relation to the family sphere. This reproduces the norm that a woman's place is within the family, the home, the private domain, where her role is to care and provide — the very issue that has led to the structural neglect faced by women in the labour policy responses to COVID-19. The dichotomy between public and private spheres has long been the subject of critiques by feminist legal scholars (Charlesworth, Chinkin and Wright 1991, 626). They argue that the foundations of western liberal theory position the public sphere of law, politics, economics and so on as the natural domain of men and regard it with a greater value in comparison to the private sphere of the home, the hearth and family life. This asymmetry in the power balance of public versus private produces and upholds the dominance of men, as is evident within the labour policy responses considered. Thus, gender-blind policies in practice can in fact operate to promote gender biases. Ultimately, ensuring women's right to work would require moving beyond the dichotomy of public/private domains to overcome the structural inequality that continuously reproduces the marginalisation of disadvantaged groups.

While maintaining compliance with the human rights and labour standards considered in section 2 of this article, EU member states should thoroughly integrate the significant vision of the cited Gender Equality Strategy 2020–2025 into their labour market policies. The EPSR Action Plan that entrenches the strategy helps to define the Commission's role in further implementing Principle 2 of this pillar. Member states are encouraged to implement the EU directives addressing gender equality and labour law, and to transpose the above-mentioned Work-life Balance Directive by August 2022. The Commission aptly emphasises the fact that 'the provision of paid leave can have a positive effect on the employment rate, in particular for women, and contribute to reducing the gender employment gap', and highlights the importance of 'the level and design of parental benefits, and the possibility to share the leave equally between men and women' (European Commission 2021a, 25).

Adopting a gender perspective is essential but not sufficient for addressing unemployment. When further drafting labour policy responses to the ongoing COVID-19 pandemic, states should fully embrace an intersectional approach whereby the experience of age, race, sexuality, class and nationality are addressed. This is already used in the EU Gender Equality Strategy. Such an approach should be followed in view of a feminist human rights preparedness, which focuses on dynamics of social hierarchies and power structures affecting access to rights. Though the meaning of preparedness can vary depending on the topic and the rights which are consequently affected, it should in the context of COVID-19 and women's right to work include actions such as equal participation in policy

decision-making, regular collection and analysis of data on the impact of states' ongoing responses, and cooperation and engagement with relevant stakeholders to monitor and ensure women's enjoyment of this right. The availability of such segregated data on states' crisis-response capacities is necessary for conducting ex-post human-rights impact assessments and for designing policies accordingly. Accordingly, through the application of a feminist human rights-based approach, states would be able to protect categories of women who are disproportionately affected by changes in the labour market caused by the ongoing and future crises.

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