



Diversity and inclusion in the European audiovisual sector

IRIS *Plus*

A publication
of the European Audiovisual Observatory



IRIS Plus 2021-1**Diversity and inclusion in the European audiovisual sector**

European Audiovisual Observatory, Strasbourg, 2021

ISSN 2079-1062

ISBN 978-92-871-9054-3 (Print version)

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Cover layout – ALTRAN, France

Please quote this publication as

Cabrera Blázquez F.J., Cappello M., Talavera Milla J., Valais S., *Diversity and inclusion in the European audiovisual sector*, IRIS Plus, European Audiovisual Observatory, Strasbourg, April 2021

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Diversity and inclusion in the European audiovisual sector

Francisco Javier Cabrera Blázquez, Maja Cappello, Julio Talavera Milla,
Sophie Valais



Foreword

Let me tell you a few stories about extraordinary people.

Artemisia Gentileschi was a seventeenth century painter, and quite a talented one at that. But for centuries, she was mostly known for having been raped by a fellow painter and for the rapist's ensuing trial, her brilliant artistry mostly ignored until very recently. Piotr Ilyich Tchaikovsky was one of the greatest composers that have walked the earth. But, like many other homosexual artists before and after him, he had to keep his private life in a closet. Gustav Mahler, on top of being a great composer, was a world-famous conductor. Despite this, being a Jew in *fin-de-siècle* Vienna, he had to convert to Catholicism in order to become director of the Imperial Opera.

Censored, ignored, closeted, forced to convert and to conform. For centuries, society's views on race, religion, gender or sexual orientation have made the lives of these and other people far more difficult than they should have been.

But sometimes it is not society but rather nature that gets in the way, making things more difficult for certain people.

Ludwig van Beethoven wrote his greatest works at a time when he had become almost completely deaf. Joaquín Rodrigo became blind at the age of three after contracting diphtheria and had to write his compositions in Braille. Claude Monet's vision was affected by cataracts but he continued painting wonderfully, and the same can be said of Henri Toulouse-Lautrec or Frida Kahlo, whose talents were not impaired by their mobility restrictions.

These are all famous examples of extraordinary people that overcame everything that society and destiny threw at them and gifted humanity with their genius. But behind these famous examples hides a quite big, anonymous crowd of artists that over centuries had to deal with the same discrimination and the same restrictions.

Moving on to the twenty-first century, and to our lives spent to a great extent in front of one or many screens, the way women and minority groups are represented on screen matters a great deal. Moreover, behind these many screens, a mostly anonymous crowd is at work. With their contributions, some creative, some technical, they are instrumental in shaping what we see and hear on screen. And that is why it is important that women and minority groups have the opportunity to be part of this job.

Coming back to our list of extraordinary people, fortunately the world that Artemisia, Piotr or Gustav had to navigate is not today's world. Many things have changed. Society has changed. Technology has changed. And very importantly, the legislation has changed. In Europe, there is an important body of legislation and case law that prohibits discrimination on many grounds. At national level, legislators and regulators have provided a diversity of tools and mechanisms to promote equality and fight discrimination, for example, by imposing obligations on broadcasters, particularly public service broadcasters. Film funds make public funding conditional on the fulfilment of equality and diversity criteria. And beyond state intervention, the European audiovisual industry has also stepped in, introducing new policies aimed at increasing diversity and promoting inclusion in the sector.

This publication aims at presenting this variety of measures in a non-comprehensive way - in a way which not only illustrates all the good work that has been done in recent years, but which also highlights shortcomings and challenges for the future.

Strasbourg, April 2021

Maja Cappello

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1. Setting the scene

Diversity and inclusion (D&I) has gained momentum in recent years, both overall and, very specially, within the film and audiovisual industries. The last few years have seen movements such as #5050x2020, #OscarsSoWhite, and #WhitewashedOUT. Two trends are at the core of D&I in the audiovisual sector; the first one is part of the trans-sectoral fight for equal opportunities and non-discrimination in the workplace; the other, specific to mediated forms of mass communication (from journalism to film production to advertising) relates to the way in which individuals from certain groups are depicted or portrayed in the messages they produce (articles, films, ads, etc.), both in terms of frequency and angle. In short, we can distinguish between on-screen and off-screen diversity and inclusion, with each category having a quantitative and a qualitative dimension to it.

Anglo-Saxon countries, and quite notably the United States, were at the forefront of the analysis of diversity - in general, as well as in media-related industries.¹ There are several reasons that help to explain this: up until the post-colonial era, the levels of ethnic diversity in most of the Western world were not comparable to those in the United States; by then, the United States was at the avant-garde of social sciences such as sociology and communication. Although some of the trends related to D&I are global, in most European countries a correlation can be observed between the growing diversity of its society, the analysis thereof, and the implementation of measures to integrate underrepresented groups. Formerly a decade-long trend in a few EU countries, the number of immigrants has grown steadily in most EU countries within the last few years.² Although immigration is not the only element that determines a country's diversity, it is the only one which can have a quick, sharp impact on the composition of a country. Other indicators, such as gender, sexual orientation and handicap, are unlikely to describe comparable quantitative changes; nevertheless, diversity cannot be measured only in quantitative terms.

In addition, we seem to be witnessing a shift from gender equality policies to a broader diversity and inclusion approach. Therefore, it is not strange that most of the identified D&I analyses and monitoring tools were implemented in countries which have made a priority of closing the gender gap in the audiovisual industry or in countries with a growingly diverse society, or in both.

¹ Larrazet, C., and Rigoni, I., 2014. *Media and Diversity: A Century-Long Perspective on an Enlarged and Internationalized Field of Research*, In *Media*, Issue 5/2014; <https://doi.org/10.4000/inmedia.747>.

² Eurostat, 2020. Population on 1 January by age group, sex and country of birth. <https://appsso.eurostat.ec.europa.eu/nui/submitViewTableAction.doc>.

1.1. What are diversity and inclusion

According to the Cambridge Dictionary, there are two definitions of diversity: “The fact of many different types of things or people being included in something; a range of different things or people” and “the fact that there are many different ideas or opinions about something”.³ The first entry focuses on D&I, while the second is related to cultural diversity, which is not the focus of this analysis. Within this context, cultural diversity could be defined as the acknowledgment and encouragement of the variety of cultures within society so they do not get diluted into a homogeneous culture. According to UNESCO, it refers to the many “ways in which the different cultures of groups and societies find expression.” It is evident “not only through the varied ways in which the cultural heritage of humanity is expressed, augmented and transmitted [...] but also through diverse modes of artistic creation, production, dissemination, distribution and enjoyment, whatever the means and technologies used.” The present analysis will address the issue of the access of minority cultural groups (linguistic, ethnic, etc.) to the workforce and their appropriate and fair portrayal on screen, but not the protection of expressions of cultural diversity as such.

Although there are many variables related to diversity (among others, gender, ethnicity, language, age, disabilities, sexual orientation, etc.), the truth is that diversity and inclusion movements understood in their broader sense started with gender and ethnic equality. It could be argued that gender equality is not part of diversity and inclusion, as women make up the majority of the world population, therefore, the gender issue would be one of underrepresentation; however, if we understand diversity not as the integration of people from minority or marginalised groups into society, but as the reflection of the plurality of a society, it is valid to include them in the analysis. In this line, diversity would be achieved insofar as (1) a fair representation of society integrates the group of professionals and decision-makers at each stage of the production of audiovisual works (off-screen diversity); and (2) the plurality of a society is accurately portrayed in them, both quantitatively and qualitatively (on-screen diversity).

As for inclusion, the same dictionary defines it as “the act of including someone or something as part of a group, list, etc., or a person or thing that is included”, as well as “the idea that everyone should be able to use the same facilities, take part in the same activities, and enjoy the same experiences, including people who have a disability or other disadvantage.”⁴ In short, it could be said that diversity and inclusion go hand in glove, with the former being the goal, while the latter is the action to achieve it. Moreover, the second entry for inclusion hints at the concept of accessibility; as in any type of communication (and films and audiovisual works are no exception), there is a sender (those producing and making available the audiovisual work), a message (the work itself) and a recipient (the audience). D&I within this context is not just about the first two elements, but also about making the work accessible to a diverse audience, including people with disabilities which may prevent them from receiving the message. In this sense, accessibility through captions, sign language, audio description or software adapted to their needs compatible with the media services are also part of D&I in the audiovisual sector. The specific issues

³ Cambridge Dictionary; <https://dictionary.cambridge.org/dictionary/english/diversity>.

⁴ Idem, <https://dictionary.cambridge.org/dictionary/english/inclusion>.

underpinning accessibility go beyond the scope of the analysis carried out for this publication, which will consider disabilities in relation to equal opportunities in the workplace and the portrayal of disabled people in on-screen representation.

It is worth noting that diversity largely depends on the composition of a country's society; the latter is the reference for the former and there is no universal standard for diversity. Therefore, it seems obvious that the diversity of audiovisual works produced in homogeneous societies cannot be judged by the same standards as those produced in heterogeneous societies. In addition, as mentioned above, diversity can be measured by multiple variables; the focus on one or more of these will depend on the composition of a given society, but also on the relevance of interest groups linked to each variable and their capacity to bring the issue forward in the political and social agenda. It can happen that, when looking at the overall picture, the audiovisual works of a country tend to put the focus on showing its ethnic plurality, but neglect its linguistic diversity, or that another country implements measures to achieve gender equality in the workplace, but does not tackle the issue of sexual orientation. Lastly, the variables used to assess diversity are not isolated compartments; each individual may fall simultaneously into several categories. The concept of *intersectionality* refers to the case of individuals who belong to several underrepresented groups; that is to say, a person belonging to an underrepresented ethnic group could also speak an underrepresented language and have an underrepresented sexual orientation. The Cambridge Dictionary defines this as “the way in which different types of discrimination (unfair treatment because of a person's sex, race, etc.) are linked to and affect each other.”⁵ The term was first used by American activist Kimberle Crenshaw in 1989⁶ to highlight how a black woman could suffer discrimination in an environment with no discrimination for either black people or women, but as a result of the juxtaposition of both categories.

1.2. Off-screen diversity and inclusion

Off-screen D&I refers not only to access to the workforce under equal conditions in terms of salary, career development and opportunities, and access to training, but also to a fair, proportional representation of society in decision-making positions: creative executives, film and TV commissioners, festival programmers, representatives of public funding selection committees, etc.

Although there are no homogeneous, comparable figures for the different possible variables (gender, ethnic background, sexual orientation, etc.), several countries have been very active in gathering and interpreting data on workforce diversity. The European Audiovisual Observatory recently released an analysis of female directors and screenwriters in the film and audiovisual sector; it showed that between 2015 and 2018, female directors accounted for only 22% of the directors of European theatrical productions (19% in the case of audiovisual fiction directors); and for just 25% of the screenwriters (34% in the case of

⁵ Idem, <https://dictionary.cambridge.org/dictionary/english/intersectionality>.

⁶ Crenshaw, K, 1989. *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, University of Chicago Legal Forum: Vol. 1989: Issue 1, Article 8; <http://chicagounbound.uchicago.edu/uclf/vol1989/iss1/8>.



audiovisual productions).⁷ In the United Kingdom, in 2015, women represented 36.7% of the workforce in creative industries, while only 11% belonged to the BAME category (Black, Asian and Minority Ethnic).⁸ That same year, a report by the Danish Film Institute showed that new Danes (immigrants to Denmark) accounted for 7.8% of the film industry workforce in the country, behind their overall weight of 11% of the population.⁹ In most cases, limited quantitative indicators may lead to an incomplete perception of the situation; for instance, in 2018, the Swedish Film Institute released a report on gender equality within public funded theatrical films in the country.¹⁰ Results showed that women accounted for 49% of the directors, 44% of the screenwriters and 54% of the producers of such films over the period 2013-2016. The conclusion would be that gender equality had been achieved; however, when looking at the gender of these three key positions by budget size, the results showed that the higher the budget, the lower the equality, with 27% of the directors of high-budget productions being women.

A widely accepted assumption establishes that an appropriate portrayal of underrepresented (quantitatively represented below their weight in society) or misrepresented groups (qualitatively represented in a stereotyped or biased way) in films and audiovisual works (on-screen diversity) requires that people from those groups are actively and relevantly involved in its production.¹¹ According to this interpretation, people tend to focus on stories which talk to and about them; following this logic, off-screen diversity at the creative and decision-making stages would be a *conditio sine qua non* to achieve on-screen diversity.

1.3. On-screen diversity and inclusion

In 1928, Russian scholar Vladimir Propp published his seminal work for narrative analysis *Morphology of the Folktale*,¹² where he identified recurrent narrative structures in Russian fairy tales. He found that most characters fell into one of only a few categories (the hero/heroine, the villain, the prince/princess, the donor, the helper, the false hero and the dispatcher), and that those characters usually had certain characteristics attached to them which made them easily identifiable. Even nowadays, literary genres, be it in written or audiovisual works, often use (and abuse) these stereotypes to create archetypes and

⁷ Female directors and screenwriters in European film and audiovisual fiction production, European Audiovisual Observatory, slide 10;

<https://rm.coe.int/female-directors-and-screenwriters-july-2020/16809ef77b>.

⁸ CAMEo, 2018. Workforce Diversity in the UK Screen Sector: Evidence Review, CAMEo Research Institute: Leicester (according to data from the Department for Digital, Culture, Media and Sport, DCMS), page 25; <https://www2.bfi.org.uk/sites/bfi.org.uk/files/downloads/bfi-workforce-diversity-in-uk-screen-sector-evidence-review-2018-03.pdf>.

⁹ DFI, 2015. Examination of Ethnic Diversity in Danish Cinema, page 9 (in Danish);

https://www.dfi.dk/files/docs/2018-02/Etnisk_mangfoldighed_i_dansk_film_dfi_2015.pdf.

¹⁰ SFI, The Money Issue. Gender Equality Report 2018;

https://www.filminstitutet.se/globalassets/_dokument/sfi-gender-equality-report-2018---lowres.pdf.

¹¹ For instance, see EWA, 2016. Where are the Women Directors? https://www.ewawomen.com/wp-content/uploads/2018/09/Complete-report_compressed.pdf.

¹² Propp, V., 1968. *Morphology of the Folktale*. University of Texas: Austin.



patterns, so as to give the audience a lot of information even before they open the book or watch the first picture.¹³ In the past, this was exploited by Hollywood to such an extent that actors were made to build up a persona in line with the type of roles they played.

Although productions are becoming more aware of stereotyping, up until recently, if a Hollywood screenwriter needed to quickly cast a shadow of a doubt on a character's intentions, it sufficed to make them talk with a German or Russian accent (for instance, the villain played by Alan Rickman in *Die Hard* or, as a parody of this device, one of the characters played by Peter Sellers in *Doctor Strangelove*). Equally, the witty, well-humoured protagonist's best friend was very often a "black buddy" and, on occasions, audiovisual productions inserted what became known as a "token black" (for instance, Ernie Hudson, in *Ghostbusters*), a deliberately black character inserted in an audiovisual work for the sake of ethnic diversity. Moreover, if a character was eccentric or homosexual, more often than not they belonged to a minority group (such as Alfonso Bedoya in *The Big Country*); this practice reached its paroxysm when the actors playing characters with a particular ethnic or racial origin did not even belong to that minority group (Peter Sellers in *The Party* or Mickey Rooney in *Breakfast at Tiffany's*). In fact, "blackface" and "yellowface" – when a non-black or non-Asian performer was made up to represent a black or Asian character – were not infrequent up until the 1970s. This is broadly known as whitewashing: "the practice of using only white actors, models, or performers, especially the practice of using a white actor to play a character who is not white."¹⁴

In addition, many film adaptations or biopics rewrite the original characters so as to portray them as normative. For instance, the practice of straightwashing consists in playing down the homosexuality of the original character or making them appear as heterosexual - for example, Celie (Woophi Goldberg) in *The Colour Purple* or John Nash (Russell Crowe) in *A Beautiful Mind*.

Media theorists have often addressed the question of to what extent mass media reflect or create (frame) reality. Although the surge of computer-mediated communication – quite notably through social networks – is changing the rules of the game, traditional mass media still play a capital role in putting a mirror in front of society; however, it can be argued that this mirror is directed (intentionally or unintentionally) only at those aspects that the media can, or want to reflect. On-screen diversity could be defined in terms of how accurately films, audiovisual content (fiction, news, etc.) and advertising portray the real composition of society. This includes variables such as ethnicity, sexual orientation and gender, among others. Traditionally, there has been a gap between the diversity of society and that of media content, both in quantitative (underrepresentation) and qualitative (misrepresentation or stereotyping) terms.

In the US, the share of white characters in theatrical films (67.3% in 2019)¹⁵ has steadily decreased in recent years, but it is still above its weight in the US's demographic

¹³ Pyrhönen, H., 2007. 'Genre' in Herman, D., *The Cambridge Companion to Narrative*. Cambridge University Press.

¹⁴ Cambridge Dictionary, <https://dictionary.cambridge.org/dictionary/english/whitewashing>.

¹⁵ Hunt, D. and Ramón A.C., 2020. *Hollywood Diversity Report 2020. Part 1: Film*, UCLA College Social Sciences. <https://socialsciences.ucla.edu/wp-content/uploads/2020/02/UCLA-Hollywood-Diversity-Report-2020-Film-2-6-2020.pdf>.

distribution (60.1%); However, after decades of overrepresentation, for the first time ever, white characters were slightly underrepresented in scripted broadcast shows in 2018-2019 (59%).¹⁶ In turn, black characters are slightly overrepresented in both formats, and Asian characters are slightly underrepresented in theatrical but not in broadcast scripted shows, while Native Americans and Hispanics remain clearly underrepresented.¹⁷ Cable and digital operators present similar trends to those described in broadcast scripted shows.

Table 1. Shares of population and characters by ethnic group in the US's theatrical films and TV shows

Categories by the US Census for Race and Hispanic Origin	US CENSUS (2019)	UCLA report	
		Theatrical films (2019)	Broadcast scripted shows (2018-19)
White alone	76.3%		
Black or African American alone	13.4%	15.7%	18.0%
American Indian and Alaska Native alone	1.3%		
Asian alone	5.9%	5.0%	6.0%
Native Hawaiian and Other Pacific Islander alone	0.2%	0.5%	1.8%
Two or More Races	2.8%		
Hispanic or Latino	18.5%	4.6%	5.0%
White alone, not Hispanic or Latino	60.1%	67.3%	59.0%

Source: US Census and UCLA reports mentioned above.

In France, the audiovisual regulator CSA (*Conseil supérieur de l'audiovisuel*) regularly releases data on on-screen representation (the share of people on screen, excluding extras and on-set audiences, among others) in a selection of broadcasts. In its latest report,¹⁸ 15% of people on screen were identified as non-white in 2019, down from 17% in 2018, in line with the 5-year average. The gathering and storage of data on the ethnicity of the population has been banned in France since 1978; therefore, there are no official statistics with which to compare the shares of representation on TV. In turn, 39% of the people on television were women, even though they accounted for 52% of the French population. The representation of disabled people has remained very low over the last few years (0.7% of the people who appeared on TV in 2019), even though a higher share of the French population has some kind of handicap (however, most of them are not perceivable, therefore it is difficult to contrast these two figures). In addition, the results show that

¹⁶ Hunt, D. and Ramón A.C., 2020. Hollywood Diversity Report 2020. Part 2: Television, UCLA College Social Sciences. <https://socialsciences.ucla.edu/wp-content/uploads/2020/10/UCLA-Hollywood-Diversity-Report-2020-Television-10-22-2020.pdf>.

¹⁷ US Census, 2019. <https://www.census.gov/quickfacts/fact/table/US/IPE120219>.

¹⁸ CSA, 2020. Baromètre de la diversité de la société française - vague 2019, <https://www.csa.fr/content/download/258988/773154/version/1/file/Barom%C3%A8tre%20de%20la%20diversit%C3%A9%20de%20la%20soci%C3%A9t%C3%A9%20fran%C3%A7aise%20-%20vague%202019.pdf>.

people on screen live mostly in an urban environment. When it comes to age, young (under 20) and older (65+) people are heavily underrepresented – even more so when isolating French content or content about France.

So-called ageism – discrimination on the basis of age – has also become an issue on the other side of the pond. For instance, senior citizens (over 60) accounted for 18.5% of the US's population and 14% of the film ticket buyers, yet only 11.8% of the speaking characters in the 25 Best Picture-nominated films between 2014 and 2016 were over 60.¹⁹

Nevertheless, even in those indicators where the gap has disappeared or seems to be closing, purely quantitative data are not enough to understand the situation. The issue of diversity is not only about raw statistics – the question is not how often certain groups are portrayed on screen, but the connotations they are portrayed with. Continuing with the CSA 2019 data mentioned above, the distribution of people on screen by the type of character (hero, main character or secondary character) seemed quite balanced in terms of gender, with 51% of women on screen representing a main character (compared to 47% of men), while men appeared slightly more often as a hero (19% of men compared to 17% of women). In addition, women tended more often to portray characters with a neutral or positive attitude. In terms of ethnicity, qualitative results were also similar for white and non-white characters in 2019. However, non-white characters were more likely to be positive or negative, rather than neutral. In addition, they are disproportionately likely to appear in a precarious situation (almost half of the characters in an economically difficult situation were non-white characters in 2019).

1.4. Diversity and inclusion toolbox

There is a wide array of tools to close the diversity gap which can be implemented or promoted by public institutions (ministries, film funds, PSBs, regulatory authorities); private institutions (private broadcasters and other media services); industry associations; or the civil society. These are aimed at either assessing the situation (studies, reports, barometers, observatories); designing D&I plans and strategies (for instance, a PBS' D&I charter); setting mandatory or flexible requirements (for instance, in a broadcaster's or film fund's commissioning guidelines); promoting the access of certain groups to the workforce in the audiovisual industries (mentoring, training, establishing quotas); or raising awareness of the lack of diversity (campaigns). At least in theory, there could also be mandatory measures which would need to be enforced on the concerned stakeholders; however, this option is, at least for now, not frequent.

¹⁹ Smith, S., Choueiti, M., and Pieper, K., 2017. *Over Sixty, Underestimated: A Look at Aging on the "Silver" Screen in Best Picture Nominated Films*, USC Annenberg; https://annenberg.usc.edu/sites/default/files/Over_Sixty_Underestimated_Report_2_14_17_Final.pdf.

2. International and EU legal framework

2.1. Measures by international organisations

A large number of international organisations have been working since the 1980s to combat inequality and discriminations based on a wide range of grounds, such as sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. Important conventions and declarations were adopted and standards have been set over the years which have marked important steps towards a more inclusive and diverse society.

In parallel with these developments, particular attention has been paid to the objective of achieving greater diversity and inclusion in the media sector, due to the special role of the media in society. The media, as guarantors of freedom of expression – which includes the right to receive and impart information – play a fundamental role in the formation of free opinions and in fostering public debate and greater social cohesion. As part of this special role, they must ensure that the public has access to a rich and diverse range of content capable of representing it in all its diversity without discrimination. This chapter looks at some of the historical texts, conventions and standards that come into play when examining the situation of diversity and inclusion in society, and in the media sector in particular. Given the large number of texts and conventions in this field, this chapter does not claim to be an exhaustive account of all legal texts, but rather a selection of the most relevant ones for the audiovisual sector.

2.1.1. The United Nations framework

The United Nations (UN) have intervened since the 1980s in favour of diversity and inclusion at different levels, whether by promoting gender equality and combating gender-based discrimination, affirming the right of all cultures to coexist, through multilingualism and media pluralism, or guaranteeing the rights of persons with disabilities. This section presents some of the main conventions and declarations which are relevant in this field.

2.1.1.1. Promoting gender equality

2.1.1.1.1. The Convention on the Elimination of All Forms of Discrimination against Women

The UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),²⁰ adopted in 1979 by the UN General Assembly, is often described as an international bill of rights for women. The CEDAW defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination. The Convention defines discrimination against women as "...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field." By accepting the Convention, states commit themselves to incorporate the principle of equality of men and women in their legal system, to abolish all discriminatory laws and adopt appropriate ones prohibiting discrimination against women. They also commit to ensure the effective protection of women against discrimination through the establishment of tribunals and other public institutions, and to eliminate all acts of discrimination against women by persons, organisations or enterprises. The CEDAW entered into force as an international treaty on 3 September 1981. To date, 189 countries have ratified the Convention and are bound by its provisions.

2.1.1.1.2. The Beijing Declaration and Platform for Action

The Beijing Declaration and Platform for Action²¹ was adopted by 189 in 1995 as a comprehensive and visionary agenda for achieving gender equality and women's empowerment. It contains a call for the removal of systematic and structural barriers that prevent women and girls from enjoying their human rights across social, economic, political and environmental domains, and policy actions to achieve the vision. The reference framework for the implementation of the goals of the Beijing Declaration is the Beijing Platform for Action (BPFA), which makes comprehensive commitments under 12 critical areas of concern. In relation to the media ("women and the media"), the BPFA aims to increase the participation and access of women to expression and decision-making and to promote a balanced and non-stereotyped portrayal of women in the media. A list of specific actions is proposed to governments, media organisations and other stakeholders to this end, the implementation of which is regularly monitored and reviewed on a regular basis.²²

²⁰ Convention on the Elimination of All Forms of Discrimination against Women New York, 18 December 1979, <https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx>.

²¹ Beijing Declaration and Platform for Action, https://www.unescwa.org/sites/www.unescwa.org/files/u1281/bdpfa_e.pdf.

²² The Commission on the Status of Women (CSW) is the principal global intergovernmental body exclusively dedicated to the promotion of gender equality and the empowerment of women, <https://www.unwomen.org/en/csw>.

The latest review carried out in March 2020²³ shows that there is still room for improvement, as technology developments are creating new spaces for the perpetration of violence against women and girls in the media. Women are still under-represented in digital news and gender stereotypes and discrimination in the media remain a particular challenge.

At the regional level, the European Union has been committed to the BPFA since 1995,²⁴ and, since 2010, the European Institute for Gender Equality (EIGE)²⁵ is responsible for monitoring progress. The fifth review of the implementation of the BPFA in the EU members states highlights the persisting gender stereotypes in media and education and the “lack of EU-wide comparable data on a range of gender-related issues” in the sector.²⁶ The vision of the Beijing Declaration was reaffirmed in 2015, when states adopted the 2030 Agenda for Sustainable Development,²⁷ with human rights and gender equality as core principles.

2.1.1.1.3. Gender-Sensitive Indicators for the Media

The United Nations Educational, Scientific and Cultural Organization (UNESCO), which has gender equality and women's empowerment as one of its priorities, has also engaged globally in a wide range of gender-specific initiatives across its divisions and main actions. In 2012, it elaborated, in cooperation with the International Federation of Journalists (IFJ) and other partners, a global framework of “Gender-Sensitive Indicators for Media” (GSIM),²⁸ aimed to contribute to gender equality and women's empowerment in and through the media. The GSIM is a non-prescriptive set of indicators on the equality and gender dimensions of social diversity, designed particularly for media of all forms, irrespective of the technology used. Its purpose is to encourage media organisations to make gender equality issues transparent and comprehensible to the public, and to analyse their own internal policies and practices with a view to taking necessary actions for change.

²³ Review and appraisal of the implementation of the Beijing Declaration and Platform for Action and the outcomes of the twenty-third special session of the General Assembly, 9-20 March 2020, <https://eige.europa.eu/>.

See also, *Gender equality, women's rights in review 25 years after Beijing*, UN Women, <https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2020/gender-equality-womens-rights-in-review-en.pdf?la=en&vs=934>.

²⁴ Madrid European Council, 15 and 16 December 1995, Presidency conclusions, https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/00400-C.EN5.htm.

²⁵ European Institute for Gender Equality, <https://eige.europa.eu/>.

²⁶ Beijing+25: the fifth review of the implementation of the Beijing Platform for Action in the EU Member States, https://eige.europa.eu/sites/default/files/documents/20190417_mh0119036enn_pdf.pdf

²⁷ UN Resolution, “Transforming our world: the 2030 Agenda for Sustainable Development,” adopted by the General Assembly on 25 September 2015, https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E.

²⁸ Gender-sensitive indicators for media: framework of indicators to gauge gender sensitivity in media operations and content, <https://unesdoc.unesco.org/ark:/48223/pf0000217831>.



2.1.1.1.4. The Violence and Harassment Convention

In June 2019, the International Labour Conference adopted the Violence and Harassment Convention²⁹ and its accompanying Recommendation³⁰ as the first international instrument setting out global standards on work-related harassment and violence. The Convention recognises that violence and harassment at work can be a human rights violation or abuse posing a threat to equal opportunities, and provides a clear framework for action. In a pragmatic approach, the Convention defines violence and harassment as “a range of unacceptable behaviours and practices” that “aim at, result in, or are likely to result in physical, psychological, sexual or economic harm.” The Convention covers violence and harassment taking place in a physical workplace, as well as work-related communications, including those enabled by Information and Communications Technology (ICT). Its focus on inclusivity means that everyone who works is protected, irrespective of contractual status, whether from the public or private sectors, the formal or informal economy,³¹ urban or rural areas, and with special focus placed on certain particularly vulnerable groups.

The Convention will enter into force on 25 June 2021 (12 months after the second member state’s ratification took place in June 2020). The Recommendation, which is not legally binding, provides guidelines on how the Convention could be applied.³²

2.1.1.2. Promoting the diversity of cultural expressions and multilingualism

The Universal Declaration on Cultural Diversity³³ was adopted unanimously by the General Conference of UNESCO on 2 November 2001. Through 12 articles and an Annex with an action plan for its implementation, the Universal Declaration raises cultural diversity to the level of “the common heritage of humanity” and makes its defence an ethical imperative indissociable from respect for the dignity of the individual. The Declaration fosters policies for the inclusion and participation of all citizens as a guarantee of social cohesion, and refers, among other things, to the rights of persons belonging to minorities and those of indigenous peoples. It creates “cultural rights”, which includes the right of all persons to express themselves and to create and disseminate their work in the language of their choice, particularly in their mother tongue, and the right to participate in the cultural life of their choice. Access for all cultures to means of expression and dissemination shall be

²⁹ Violence and harassment convention (No. 190), International Labour Organisation, 2019, https://www.ilo.org/ilc/ILCSessions/108/reports/texts-adopted/WCMS_711570/lang--en/index.htm.

³⁰ Recommendation 206 concerning the elimination of violence and harassment in the world of work, adopted by the conference at its hundred and eighth session, Geneva, 21 June 2019, https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_711575.pdf.

³¹ <https://www.ilo.org/global/topics/dw4sd/themes/informal-economy/lang--en/index.htm>.

³² At regional level, the European Union cannot ratify ILO conventions because the European Union is not a member of the organisation, only member states can ratify such conventions. When the ILO instrument touches on EU competences, a Council decision authorising ratification is required. For further information, see: <https://ec.europa.eu/social/main.jsp?catId=89&furtherNews=yes&langId=en&newsId=9532>.

³³ UNESCO Universal Declaration on Cultural Diversity, 2 November 2001, http://portal.unesco.org/en/ev.php-URL_ID=13179&URL_DO=DO_TOPIC&URL_SECTION=201.html.

guaranteed through freedom of expression, media pluralism, multilingualism, and equal access to art and to scientific and technological knowledge, including in digital form.

Five years later, the General Conference of UNESCO adopted, on 21 October 2005, the Convention for the Protection and Promotion of the Diversity of Cultural Expressions,³⁴ as the first legally-binding international agreement that recognises the sovereign right of states to maintain, adopt and implement policies to protect and promote the diversity of cultural expressions, both nationally and internationally. The recognition of the importance for social cohesion of the diversity and plurality of the identities and cultural expressions of people and societies, including for persons belonging to minorities and indigenous peoples, is at the core of the 2005 Convention.

2.1.1.3. Protecting the rights of persons with disabilities

The UN Convention on the Rights of Persons with Disabilities (CRPD)³⁵ and its Optional Protocol was adopted on 13 December 2006 and entered into force on 3 May 2008. It sets out the legal obligations on states to promote and protect the rights of persons with disabilities. The CRPD is a legally binding instrument that concerns all disabilities across all sectors, and builds upon previous international texts related to persons with disabilities.³⁶ The Convention, however, does not explicitly define disability. Its Preamble states that “Disability is an *evolving* concept, and that disability results from the *interaction* between persons with impairments and attitudinal and environmental barriers that hinder full and effective participation in society on an equal basis with others.” The CRPD provides a list of general principles for persons with disabilities, which include the right to individual autonomy, non-discrimination (including related to gender equality), participation and inclusion in society, equality of opportunity and accessibility.

The CRPD is the first international, legally binding instrument setting minimum standards for the rights of people with disabilities, and the first human rights convention to which the European Union has become a party. It was ratified by the European Union in 2006 and thus became an integral part of the Union legal order, and Union legal acts must, as far as possible, be interpreted in a manner that is consistent with it.

2.1.1.4. Combating sexual orientation or gender identity-based discriminations

Human rights treaty bodies have confirmed that sexual orientation and gender identity are included among the prohibited grounds for discrimination under international human rights

³⁴ Convention for the Protection and Promotion of the Diversity of Cultural Expressions <https://en.unesco.org/creativity/convention/texts>.

³⁵ Convention on the Rights of Persons with Disabilities (CRPD), https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=en.

³⁶ In particular, the Standard Rules on the Equalization of Opportunities for Persons with Disabilities - 1994 (not a legally binding treaty), <https://www.un.org/development/desa/disabilities/standard-rules-on-the-equalization-of-opportunities-for-persons-with-disabilities.html>; and the World Programme of Action on Disabled Persons, <https://www.un.org/development/desa/disabilities/history-of-united-nations-and-persons-with-disabilities-the-world-programme-of-action-concerning-disabled-persons.html>.

law. This means that it is unlawful to make any distinction between people's rights based on the fact that they are lesbian, gay, bisexual or transgender (LGBT+), just as it is unlawful to do so based on other grounds, such as skin colour, race, sex, religion, etc. This position has been confirmed repeatedly in decisions and general guidances issued by several UN treaty bodies. In June 2011, the UN Human Rights Council (UNHRC) became the first UN intergovernmental body to adopt a wide-ranging resolution on human rights, sexual orientation and gender identity. The UN Resolution 17/19 on Human rights, sexual orientation and gender identity³⁷ expressed the Council's "grave concern" at violence and discrimination against individuals based on their sexual orientation and gender identity, and commissioned a study on the scope and extent of these violations and the measures needed to address them. In addition, in 2016, the UNHRC passed a resolution to appoint an Independent Expert to find the causes of violence and discrimination against people due to their gender identity and sexual orientation, and to discuss how to protect those people with governments. This long-term, OHCHR-based mandate has been seen as the UN's "most overt expression of gay rights as human rights."³⁸

2.1.2. The Council of Europe framework

The Council of Europe has been playing a leading role in the field of diversity and the inclusion of all human beings in society. It has done so not only by laying the foundations for non-discrimination and equality through its core conventions, but also through its standards-setting activities in various areas, such as: gender equality; the rights of persons with disabilities; the protection of national minorities; the rights of migrants; regional and minority languages; the fight against racism and intolerance; sexual orientation and gender identity, etc. This section presents the main conventions and recommendations of the Committee of Ministers of the Council of Europe in some of these fields.³⁹

2.1.2.1. Non-discrimination and equality

2.1.2.1.1. The European Convention on Human Rights

The principle of non-discrimination has been enshrined in the founding treaties of the Council of Europe since its origins. Thus, the European Convention on Human Rights (ECHR)⁴⁰ already provided, in its first adopted version in 1950, that the enjoyment of the

³⁷ UN Resolution 17/19 on Human rights, sexual orientation and gender identity, <https://undocs.org/A/HRC/RES/17/19>.

³⁸ Resolution 32/2 adopted by the Human Rights Council on 30 June 2016, Protection against violence and discrimination based on sexual orientation and gender identity, https://www.un.org/en/ga/search/view_doc.asp?symbol=A/HRC/RES/32/2.

³⁹ For further information on the work carried out by the Council of Europe in the promotion of human rights, please see at: <https://www.coe.int/en/web/portal/human-rights>.

⁴⁰ The European Convention on Human Rights, as amended by its Protocols, can be consulted here: https://www.echr.coe.int/documents/convention_eng.pdf.

rights and freedoms set forth in it shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status (Article 14 ECHR). In particular, the ECHR provides that everyone's right to life shall be protected by law (Article 2 ECHR), and that everyone has the right to liberty and security of person (Article 5 ECHR). It establishes the right of everyone to respect for his/her private and family life, home, and correspondence, without interference by a public authority (Article 8 ECHR). Everyone shall also, under the Convention, have the right to freedom of thought, conscience, and religion (Article 9 ECHR). Freedom of expression, which is particularly relevant in the audiovisual sector, is also guaranteed to everyone under the Convention (Article 10 ECHR). It shall include the freedom to hold opinions and to receive and impart information and ideas without interference by a public authority, and regardless of frontiers. In 1984, the principle of equality between spouses was incorporated into the ECHR through Protocol No. 7, and in the year 2000, Protocol No. 12 prohibited discriminations by any public authority based on any such grounds. The ECHR governments which have signed up to the ECHR have made a legal commitment to abide by certain standards of behaviour and to protect the basic rights and freedoms of ordinary people.

2.1.2.1.2. The European Social Charter

The European Social Charter⁴¹ is a Council of Europe treaty that guarantees fundamental social and economic rights as a counterpart to the European Convention on Human Rights, which refers to civil and political rights. It guarantees a broad range of everyday human rights related to employment, housing, health, education, social protection, and welfare. The Charter puts specific emphasis on the protection of vulnerable persons such as elderly people, children, people with disabilities and migrants. It requires that enjoyment of the above-mentioned rights be guaranteed without discrimination. Adopted in 1961, the Charter was revised in 1996, with a view to taking account of the evolution taking place in Europe. The 1996 Charter includes, in particular, new rights, such as the right to protection against poverty and social exclusion, the right to protection against sexual harassment in the workplace and other forms of harassment, and the rights of workers with family responsibilities to equal opportunities and equal treatment. It reinforces the principle of non-discrimination, improves gender equality in all fields and ensures a better maternity and social protection of mothers, as well as a better protection of handicapped people. The European Committee of Social Rights⁴² monitors the conformity of national situations with the Charter, both through a reporting system and through a procedure for collective complaints.

⁴¹ European Social Charter, <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/035>.
<https://www.coe.int/en/web/european-social-charter/home>.

⁴² <https://www.coe.int/en/web/european-social-charter/european-committee-of-social-rights>.

2.1.2.2. Protecting national minorities

The protection of national minorities has always been on the Council of Europe's agenda, but the issue acquired even more importance with the collapse of European communist regimes, extreme nationalism and conflicts in certain parts of Europe, all of which have spurred migrations to and within Europe. The Council of Europe's most comprehensive text for protecting the rights of persons belonging to national minorities is the Framework Convention for the Protection of National Minorities (FCNM).⁴³ It is the first legally binding multilateral instrument devoted to the protection of national minorities worldwide. It was adopted on 10 November 1994 by the Committee of Ministers and it entered into force on 1 February 1998. It has 39 signatories to date.

The FCNM sets out principles as well as goals to be achieved by the states in order to ensure the protection of national minorities.⁴⁴ Parties to the FCNM undertake to promote the full and effective equality of persons belonging to minorities in all areas of economic, social, political, public and cultural life, together with the conditions that will allow them to express, preserve and develop their culture, religion, language and traditions (including the access to and the use of the media). An Advisory Committee, composed of independent experts, participates in the monitoring of the FCNM, and has become a central reference in the work of other international bodies, such as the OSCE High Commissioner on National Minorities⁴⁵ and the European Union Agency for Fundamental Rights (FRA).⁴⁶

Apart from the ECHR and the European Social Charter, whose universally applicable individual rights can also be claimed by persons belonging to national minorities, other Council of Europe legal texts are relevant to national minorities, such as the European Charter for Regional or Minority Languages,⁴⁷ which focuses on the protection and promotion of minority languages. In addition, the Council of Europe's European Commission against Racism and Intolerance (ECRI)⁴⁸ makes an important contribution to the fight against the discrimination of persons belonging to minorities.⁴⁹

2.1.2.3. Promoting gender equality

The Council of Europe's work in the fields of human rights and gender equality has resulted in comprehensive legal standards and policy guidance aimed at achieving the advancement

⁴³ Framework Convention for the Protection of National Minorities, <https://www.coe.int/en/web/minorities/at-a-glance>.

⁴⁴ The FCNM does not provide for a definition of the concept of "national minority" as there is no general definition agreed upon by all Council of Europe member states. Each party to the Convention must therefore assess which groups are to be covered by the Convention within their territory.

⁴⁵ <https://www.osce.org/hcnm>.

⁴⁶ <https://fra.europa.eu/fr/about-fra>.

⁴⁷ European Charter for Regional or Minority Languages, <https://www.coe.int/en/web/european-charter-regional-or-minority-languages/text-of-the-charter>.

⁴⁸ <https://www.coe.int/en/web/european-commission-against-racism-and-intolerance>.

⁴⁹ See also the Council of Europe report prepared by COMMIT – Community Media Institute *Spaces of Inclusion - An explorative study on needs of refugees and migrants in the domain of media communication and on responses by community media*, <https://www.coe.int/en/web/freedom-expression/-/a-new-report-on-the-role-of-community-media-for-refugees-and-migrants-has-been-published>.

and empowerment of women and the effective realisation of gender equality in Council of Europe member states and beyond.

2.1.2.3.1. Council of Europe conventions

The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention, 2011)⁵⁰ is the most far-reaching international treaty to tackle violence against women in all its forms. Preventing violence, protecting victims, prosecuting the perpetrators and integrated policies at national level are its cornerstones. The Istanbul Convention envisages a two-pillar monitoring mechanism to assess and improve its implementation: the independent Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), and the Committee of the Parties. Other conventions concerning gender equality are also relevant, such as the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention, 2007),⁵¹ which is the first treaty to criminalise all forms of sexual offences against children. It is also worth mentioning the Council of Europe Convention on Action against Trafficking in Human Beings (2005), aimed at preventing and combating trafficking in women, men and children for the purpose of sexual, labour or other types of exploitation, as well as at protecting victims and prosecuting traffickers.⁵² Notably, the Convention includes a non-discrimination provision and the obligation for parties to promote gender equality and use gender mainstreaming in the development, implementation and assessment of measures.

2.1.2.3.2. Committee of Ministers recommendations to member states

Three recommendations of the Committee of Ministers (CM) of the Council of Europe relating specifically to sexism and gender in the audiovisual sector have been adopted in recent years. In 2013, the Recommendation Rec(2013)⁵³ on gender equality and media provided guidelines and actions with a view to promoting gender equality and combatting gender stereotyping in the media. Sixteen measures were spelled out for the attention of member states and media organisations, to be implemented in six areas: gender equality policy and legislation, indicators, provision of information and promotion of good practices, accountability channels, research and publication and media literacy, and active citizenship. A comprehensive Handbook to support the implementation of this Recommendation⁵⁴ by member states was published in 2015.

⁵⁰ Council of Europe Convention on preventing and combating violence against women and domestic violence, Istanbul, 11 May 2011, <https://www.coe.int/fr/web/conventions/full-list/-/conventions/treaty/210>.

⁵¹ Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/201>.

⁵² Council of Europe Convention on Action against Trafficking in Human Beings, <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/197>.

⁵³ CM/Rec(2013) on gender equality and media, 10 July 2013, https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805c7c7e.

⁵⁴ <https://rm.coe.int/1680590558>.

In 2017, the Recommendation Rec(2017)⁵⁵ on gender equality in the audiovisual sector was adopted as the first pan-European recommendation to address gender equality issues in the audiovisual industry. It addresses, in particular, the lack of awareness thereof; conscious and unconscious gender bias at all levels; and the unequal distribution of funding. The Recommendation invites governments to review their legislation and policies; collect, monitor and publish data; support research; encourage the ongoing development of media literacy; and enhance accountability processes. The Recommendation also contains tools for developing knowledge in the area and a series of monitoring methods and performance indicators.

In 2019, the Recommendation Rec(2019) on preventing and combating sexism⁵⁶ was adopted, which contains the first definition of sexism at international level. The definition covers any act, gesture, visual representation, spoken or written words, practice or behaviour based on the idea that a person or group, disproportionately often women, is inferior because of their sex. The Recommendation emphasises the link between sexism and violence against women, and requires member states to address sexism in several areas, including language and communications, the Internet and social media, media, advertising, the workplace, etc. Member states are required to monitor progress and report periodically to the Council of Europe.

Table 2. List of main recommendations of the Committee of Ministers to member states in relation to gender equality⁵⁷

Year	Recommendation to member states	Topics addressed
2019	Rec(2019)1 on preventing and combating sexism ⁵⁸	Defines sexism in the media, on the Internet and social media, and in advertising; the workplace, etc.; Establishes the link between sexism and violence.
2017	Rec(2017)9 on gender equality in the audiovisual sector ⁵⁹	Addresses gender imbalance and bias in the audiovisual sector; Invites states to review their laws and policies; encourages data collection, research, media literacy and accountability processes.
2015	Rec(2015)2 on gender mainstreaming in sport ⁶⁰	Promotes policies and practices towards gender mainstreaming in all fields and at all levels of sport.
2013	Rec(2013)1 on gender equality and media ⁶¹	Contains guidelines for member states and media organisations, to promote gender equality and combat gender stereotyping in the media.

⁵⁵ CM/Rec(2017) on gender equality in the audiovisual sector, 27 September 2017, <https://rm.coe.int/native/09000016807509e6>.

⁵⁶ CM/Rec(2019) on preventing and combating sexism, 27 March 2019, <https://rm.coe.int/168093b26a>.

⁵⁷ See also Gender equality and women's rights – Council of Europe Standards, <https://rm.coe.int/168058feef>.

⁵⁸ <https://rm.coe.int/168093b26a>.

⁵⁹ <https://rm.coe.int/native/09000016807509e6>.

⁶⁰ https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805c4721.

⁶¹ https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805c7c7e.



Year	Recommendation to member states	Topics addressed
2012	Rec(2012)6 on the protection and promotion of the rights of women and girls with disabilities ⁶²	Promotes positive actions to endorse the rights and encourage the participation of women and girls with disabilities in all areas.
2010	Rec(2010)10 on the role of women and men in conflict prevention and resolution and in peace building ⁶³	Contains guidelines on how to address the different roles attributed to women and men in conflict prevention, resolution and peace building activities.
2008	Rec(2008)1 on the inclusion of gender differences in health policy ⁶⁴	Develops a gender mainstreaming approach in health policies and strategies.
2007	Rec(2007)17 on gender equality standards and mechanisms ⁶⁵	Contains measures to achieve gender equality in practice (e.g. through responsibilities, transparency, language, standards, etc.).
2007	Rec(2007)13 on gender mainstreaming in education ⁶⁶	Promotes measures to implement gender mainstreaming in the education system.
2003	Rec(2003)3 on balanced participation of women and men in political and public decision-making ⁶⁷	Defines the gender-balanced participation as a minimum 40% representation in any decision-making body in political and public life.
2002	Rec(2002)5 on the protection of women against violence ⁶⁸	Contains measures to end all forms of violence against women, including legislative and policy measures and awareness-raising.
1998	R(98)14 on gender mainstreaming ⁶⁹	Creates an enabling environment for the implementation of gender mainstreaming.
1996	R(96)51 on reconciling work and family life ⁷⁰	Enables women and men to better reconcile their working and family lives: abolishing discriminations based on gender in the labour market; developing support for families; adapting social security schemes, tax systems, etc.
1990	R(90)4 on the elimination of sexism from language ⁷¹	Promotes the use of language reflecting the principle of equality between women and men.

⁶² https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805caaf7.

⁶³ https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805cea74.

⁶⁴ https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805d4212.

⁶⁵ https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805d4aa3.

⁶⁶ https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805d5287.

⁶⁷ https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805e0848.

⁶⁸ https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805e2612.

⁶⁹ https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016804ec94a.

⁷⁰ <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804d4ea1>.

⁷¹ <https://rm.coe.int/1680505480>.

Year	Recommendation to member states	Topics addressed
1985	R(85)2 on legal protection against sex discrimination ⁷²	Contains measures for the promotion of gender equality, including through legislation on employment; social security and pensions; taxation; civil law, etc.
1979	R(79)10 concerning women migrants ⁷³	Ensures that national legislations concerning women migrants are fully adapted to international standards.

2.1.2.3.3. Gender Equality Strategy 2018 - 2023

Besides the adoption of recommendations by the Committee of Ministers, the Council of Europe has also made strong commitments to the effective realisation of a Gender Equality Strategy 2018–2023,⁷⁴ both through the implementation of standards and through measures and activities in six priority areas:

- Preventing and combatting gender stereotypes and sexism;
- Preventing and combatting violence against women and domestic violence;
- Ensuring equal access of women to justice;
- Achieving a gender-balanced participation in political and public decision-making;
- Protecting the rights of migrant, refugee and asylum-seeking women and girls;
- Achieving gender mainstreaming in all policies and measures.

The question of gender stereotypes and sexism in the media is addressed under the first strategic objective. The Council of Europe Steering Committee on Media and Information Society (CDMSI) also works on gender equality issues and has undertaken a series of activities on this topic.

2.1.2.3.4. Eurimages – Strategy for gender equality

Eurimages, as the cultural support fund of the Council of Europe, has also been considering the issue of gender equality in the film industry for many years. Through its Gender Equality Working Group, it assesses the presence of women in the cinema sector in co-operation with other national and international bodies. The Working Group analyses the situation of Eurimages with regard to gender equality in the selection of projects and collects information on the “gender of the project” and on the content of the scripts submitted (Bechdel test).⁷⁵ Its mandate has recently been extended to cover other forms of discrimination on- and off-screen (and renamed accordingly as “Gender Equality and Diversity”). Furthermore, as part of its strategy, Eurimages aims to achieve an equal

⁷²<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168058ff43>.

⁷³ <https://rm.coe.int/1680505480>.

⁷⁴ Gender Equality Strategy 2018 – 2023, <https://www.coe.int/en/web/genderequality/gender-equality-strategy>.

⁷⁵ <https://bechdeltest.com/>.

distribution of co-production funding between women and men by the year 2020 and organises information and awareness campaigns to this end. On 16 October 2020, the Eurimages Board of Management adopted its third strategy for gender equality in the European film industry covering the period 2021-2023. The strategy reflects the Fund's ongoing commitment to addressing the problem of the under-representation of women in the field of cinema and, in particular, to supporting female-driven projects, improving the visibility of female directors and sharing best practice.⁷⁶

2.1.2.4. Combatting sexual orientation and gender identity-based discriminations

On 31 March 2010, the Committee of Ministers of the Council of Europe adopted the first instrument dealing specifically with the question of discriminations based on sexual orientation and gender identity (SOGI), through the Recommendation on measures to combat discrimination based on sexual orientation or gender identity (CM/Rec(2010)5).⁷⁷ The Recommendation sets out the principles deriving from existing European and international instruments and identifies specific measures to be adopted and effectively enforced by member states in order to combat discrimination based on such grounds in twelve thematic fields, including freedom of expression, respect for private and family life, employment, etc.⁷⁸

2.1.2.5. Protecting the rights of persons with disabilities

Based on the UN Convention on the Rights of Persons with Disabilities (CRPD),⁷⁹ the European Convention on Human Rights and other legal standards, the Council of Europe endeavours to enhance equal opportunities, improve the quality of life and independence of people with disabilities, and to guarantee their active participation in the life of the community. In this context, the Council of Europe adopted in November 2016 a Disability Strategy 2017–2023 in cooperation with civil society. The Strategy seeks to encompass all civil, political, economic, social and cultural rights and sets out the commitments of the Council of Europe and its member states to make the rights a reality for all persons with disabilities, regardless of their impairment.⁸⁰

⁷⁶ <https://www.coe.int/en/web/eurimages/gender-equality>.

⁷⁷ (CM) Recommendation to member states on measures to combat discrimination based on sexual orientation or gender identity (CM/Rec(2010)5), https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805cf40a.

⁷⁸ For further details on the work carried out by the Council of Europe on sexual orientation or gender identity-based discriminations, please see: <https://www.coe.int/en/web/sogi/themes>.

⁷⁹ For further details on the CRPD, please refer to Section 2.1.1.1.3 of this publication.

⁸⁰ Council of Europe Strategy on the Rights of Persons with Disabilities 2017–2023 on 30 November 2016, <https://www.coe.int/en/web/disability/strategy-2017-2023>.

2.1.2.6. Other initiatives and programmes

Many initiatives and programmes have been launched over the years at Council of Europe level or in cooperation with other international organisations. For example, in 2011/12, the MARS – Media Against Racism in Sport – EU/CoE joint programme gathered over 1000 participants from different fields in the media during national and European encounters and cross-media exchanges.⁸¹ In the same vein, the EU/CoE joint programme MEDIANE – Media in Europe for Diversity Inclusiveness – aimed to strengthen the media’s ability to include diversity and non-discrimination in their daily media work. MEDIANE has supported 160 European Exchanges of Media Practices (EEMPs) between media outlets and professionals, 10 European and Thematic Encounters to share practice examples and tools on diversity inclusiveness, and the development of a media self-monitoring and action-support tool on diversity – the Media Index on Diversity Inclusiveness.⁸²

2.2. Measures by the European Union

The principles of non-discrimination and equality are enshrined in the EU treaties. They are also addressed in directives applying transversally to all sectors. On the other hand, achieving greater diversity and inclusion in the audiovisual sector has been increasingly emphasised as a policy goal at EU level in recent years. This has materialised not only in the search for a more balanced representation of gender on and off screen, but also of other underrepresented groups, whether in terms of ethnicity, sexual orientation, minorities, social origins, or any other discriminatory grounds. Emphasis has also been placed on allowing people with disabilities access to the media in a context of increased digitalisation, which, paradoxically, may also increase the risk of social marginalisation.

2.2.1. Non-discrimination and equality

2.2.1.1. EU Treaties’ provisions on equality and non-discrimination

The principles of equality and non-discrimination are part of the founding values of the European Union and, as such, have been enshrined in the EU Treaties since its origins. In particular, Articles 2 and 3 of the Treaty on European Union (TEU)⁸³ provide that these values are common to the member states and that non-discrimination and equality between women and men shall prevail in society. Equality between women and men is also enshrined in Article 8 of the Treaty on the Functioning of the European Union (TFEU), which

⁸¹ https://www.coe.int/t/dg4/cultureheritage/mars/default_en.asp.

⁸² https://www.coe.int/t/dg4/cultureheritage/mars/mediane/default_en.asp.

⁸³ Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3AC2012%2F326%2F01>.

states that, in all its activities, the Union shall aim to eliminate inequalities, and to promote equality between women and men.

The Charter of Fundamental Rights of the European Union,⁸⁴ which – under the Lisbon Treaty – has the same value as the treaties, prohibits, for its part, any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation, nationality, etc., (Article 21). The Charter also establishes that the Union shall respect cultural, religious and linguistic diversity and that equality between men and women must be ensured in all areas, including employment, work and pay (Articles 22 and 23). In particular, Article 33 of the Charter provides for the right to protection from dismissal for a reason connected with maternity, as well as the right to paid maternity leave and to parental leave following the birth or adoption of a child, in order to reconcile family and professional life. The Charter also provides for the rights of the elderly to participate in social and cultural life (Article 25) and for the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community (Article 26). In addition to these principles, the TFEU⁸⁵ allows the Council to take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation (Article 19).

In relation to gender equality, the principle of equal pay for male and female workers for equal work has been enshrined in the European treaties since 1957. This principle is now included in Article 157 of the TFEU, which provides further details on its application in matters of employment and occupation. Furthermore, the TFEU gives competences to the European Union to support and complement the activities of the member states in relation to equality between men and women with regard to labour market opportunities and treatment at work (Article 153). In particular, the European Parliament and the Council shall take measures to ensure the application of this principle (Article 157(3)), and member states are expressly authorised to adopt positive actions to facilitate the exercise of a professional activity by the underrepresented sex or to prevent or compensate for disadvantages in professional careers (Article 157(4)).

2.2.1.2. The Racial Equality Directive 2000/43/EC

The prohibition of discriminations based on racial or ethnic origin is grounded in the EU Treaties and in the Charter of Fundamental Rights of the European Union. The need to combat racism and xenophobia attracted increasing attention from the EU institutions in the 1990s, leading to the adoption of several measures in this field. The Racial Equality Directive (2000/43/EC) (RED),⁸⁶ which implements the principle of equal treatment between

⁸⁴ Charter of Fundamental Rights of the European Union, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12012P%2FTXT>.

⁸⁵ Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, op. cit.

⁸⁶ Council Directive 2000/43/EC implementing the principle of equal treatment between persons, irrespective of racial or ethnic origin, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32000L0043>.

persons, irrespective of racial or ethnic origin, was a key measure in this respect. The RED prohibits discrimination on the ground of racial or ethnic origin in a broad range of fields, including employment, social protection and social advantages, education, and goods and services available to the public, including housing.⁸⁷ EU member states are authorised under the directive to adopt specific measures to prevent or compensate for disadvantages linked to these grounds (“positive action”). They shall make judicial and/or administrative procedures available for individuals to pursue their rights and offer effective, proportionate and dissuasive sanctions. Member states must also set up equality bodies in order to offer assistance to victims. Finally, the directive encourages dialogue between social partners to promote equality policies and foster dialogue with NGOs. The adoption of the RED (as well as the Employment Equality Directive) initiated a movement throughout Europe, leading to quite profound changes to national legislative frameworks, through the adoption of new anti-discrimination laws.⁸⁸

The second important piece of legislation in this field is the Framework Decision on combating racism and xenophobia,⁸⁹ adopted on 28 November 2008. The Framework Decision defines a common, EU-wide criminal law approach to certain racist and xenophobic conducts in order to ensure that the same behaviour constitutes an offence in all member states and that effective, proportionate and dissuasive penalties are provided for natural and legal persons having committed or being liable for such offences. While the Framework Decision does not provide for the full harmonisation of criminal laws in this field, it establishes the minimum approximation necessary to ensure that national legislation is sufficiently comprehensive. In particular, the Framework Decision criminalises the “public incitement to violence or hatred directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin” by the public dissemination or distribution of tracts, pictures or other material (or “racist hate speech”, Article 1). Furthermore, it ensures that the racist and xenophobic motivation is considered as an aggravating circumstance in the determination of the penalties (“racist hate crime”, Article 4).

In parallel to these legal developments, the European Commission facilitates the exchange of information and good practices through several networks and expert groups (for example, the EU High Level Group on combating racism, xenophobia and other forms of intolerance). The European Union Agency for Fundamental Rights (FRA)⁹⁰ collects and analyses data and carries out research on fundamental rights, providing assistance and expertise at EU and national level, including in the areas of non-discrimination, racism, intolerance and hate crime. In addition, particular attention has been paid at EU level to the prevention and countering of the spread of online hatred on the grounds of race, colour,

⁸⁷ The RED operates alongside other EU directives prohibiting discriminations in the field of employment and discriminations based on gender, such as the Employment Equality Directive (2000/78/EC)(EED); the Gender Equality Directive (2006/54/EC); and the Gender Equality Directive on Goods and Services (2004/113/EC).

⁸⁸ For more details on the implementation of the Racial Equality Directive, please refer to Chapter 3 of this publication. See also: *The Racial Equality Directive: application and challenges*, https://fra.europa.eu/sites/default/files/fra_uploads/1916-FRA-RED-synthesis-report_EN.pdf.

⁸⁹ Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32008F0913>.

⁹⁰ European Union Agency for Fundamental Rights (FRA), <https://fra.europa.eu/en>.

religion, descent, national or ethnic origin, sexual orientation and gender identity, disability or other characteristics. In this field, the European Union aims to ensure that EU and national legislation on combatting hate speech is better enforced in the online environment across the European Union (e.g. through the adoption of Codes of conducts with major social platforms to counter illegal hate speech online).⁹¹

In September 2020, the European Commission announced a new EU anti-racism Action Plan⁹² that sets out a series of measures for the next five years, ranging from the strengthening of anti-discrimination laws to the creation of tools and databases, the issuing of EU funding and the launching of awareness raising campaigns to combat racial and ethnic stereotypes through media, education, culture and sport.

2.2.1.3. The Employment Equality Directive 2000/78/EC

Employment is considered a pivotal element of social inclusion. It is also a key element in guaranteeing equal opportunities and an important factor for people to realise their potential. Based on Article 19 of the TFEU prohibiting discriminations, the Employment Equality Directive (2000/78/EC) (EED)⁹³ was adopted in November 2000, a few months after the Racial Equality Directive 2000/43/EC (RED), in order to create a “level playing-field as regards equality in employment and occupation” (Recital 37 EED). The EED lays down a general framework with specific and horizontally-applicable requirements for combating discrimination on the grounds of religion or belief, disability, age and sexual orientation, with a view to putting into effect the principle of equal treatment in the member states (Chapter I). Member states may provide for a higher level of protection in their national laws. In addition, the EED regulates procedural matters, essential for the judicial and out-of-court application of its provisions in national law (Chapter II).

Formal equality requires that people in the same situation be treated in the same way, and this type of equality can be seen mostly in the definition of direct discrimination. However, other forms of discrimination exist which must be prohibited and which the EED distinguishes as follows (Article 2 EED):

- Direct discrimination: when a person is treated less favourably than others, in a comparable situation;
- Indirect discrimination: when an apparently neutral provision, criterion or practice would put a given person at a particular disadvantage compared to others.

⁹¹ Code of conduct on countering illegal hate speech online, https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/racism-and-xenophobia/eu-code-conduct-countering-illegal-hate-speech-online_en.

⁹² A Union of Equality: EU anti-racism action plan 2020 – 2025, 18 September 2020, https://ec.europa.eu/info/sites/info/files/a_union_of_equality_eu_action_plan_against_racism_2020_-_2025_en.pdf.

⁹³ Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32000L0078>.

- Harassment: when an unwanted conduct takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.

The EED applies to all aspects of employment, occupation and vocational training, in both the private and public sectors (Article 3 EED). In addition, the principle of equal treatment shall not prevent member states from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to any of the grounds covered (Article 7 EED).

Twenty years have passed since the EED was adopted.⁹⁴ While the UN Convention on the Rights of Persons with Disabilities (CRPD) covers virtually every aspect of life, the scope of application of the EED is limited to employment, occupation and vocational training. In order to expand the protection against discrimination beyond the narrow sphere of employment, the European Commission put forward a legislative proposal in 2008, generally referred to as the Horizontal Equal Treatment Directive.⁹⁵ This proposal sought to widen the EED's scope of application by aligning it with that of the Racial Equality Directive (RED), thus also covering education, social protection, health care, access to goods and services and housing. At the same time, the proposal also addressed some existing inconsistencies between the EED and the CRPD. Unlike the EED and the RED, which were both swiftly adopted in 2000, the 2008 proposal for a horizontal directive faced strong resistance in the Council and continues to do so.

2.2.1.4. The “recast” Directive on Gender Equality

The European Union has a long history of undertaking action to promote gender equality. Since 1957, when the principle that both sexes should receive equal pay for equal work was included in Article 119 of the Treaty of Rome, equality between women and men has gained in importance as an EU policy area. Over the following decades, the initial focus on pay and employment equality has broadened to encompass other areas of economic and social policy. At the same time, the approach has shifted from legal protection against discrimination based on sex (equal treatment) to more proactive measures to overcome the historical disadvantages faced by women and to achieve equality in practice, including the adoption of “gender mainstreaming” to ensure that all new EU policies contribute to this outcome. As of 2006, thirteen European directives constituted the legal corpus governing gender equality: twelve in the field of employment and one concerning the equal treatment of women and men in respect of access to and the supply of goods and services.⁹⁶ This

⁹⁴ See also Chapter 3 of this publication.

⁹⁵ Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A52008PC0426>.

⁹⁶ The main directives are as follows: Council Directive 75/117/EEC on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31975L0117>; Directive 76/207/EEC, amended by Directive 2002/73 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, <https://eur-lex.europa.eu/legal->

abundance of protective sources and the continued evolution of case law at the European Court of Justice eventually prompted the European legislator to recast these directives as a single text. In 2006, the “recast” 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 occupation⁹⁷ was adopted, with the objective of consolidating six directives on gender equality by simplifying, modernising, and improving EU legislation in the area of equal treatment for men and women in employment.⁹⁸

The purpose of the “recast” Directive is twofold. First, it aims to ensure the application of the principle of equal opportunities and the equal treatment of men and women by prohibiting direct or indirect discrimination in matters regarding access to employment, vocational training and promotion, and working conditions. This includes the principle of equal pay for equal work or work of equal value, and equal treatment under occupational social security schemes. Secondly, it aims to ensure that member states put in place remedies for employees who have been victims of discrimination, as well as penalties and reparation or compensation possibilities in relation to the damage sustained. EU countries shall appoint bodies to ensure the implementation of the law and provide independent support to victims of discrimination. In addition, enterprises must promote the principle of gender equality and strengthen the role of social partners and non-governmental organisations.

Other directives related to gender equality issues could not be covered by the 2006 “recast” Directive, as they are founded on different clauses of the EU Treaty.⁹⁹ For example,

[content/EN/TXT/?uri=celex%3A31976L0207](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31976L0207); Directive 86/378 on the implementation of the principle of equal treatment for men and women in occupational social security schemes, amended by Directive 96/97, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31986L0378>; Directive 86/613 on the application of the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31986L0613>; Directive 97/80 on the burden of proof in cases of discrimination based on sex, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31997L0080>; Directive 2004/113 implementing the principle of equal treatment between men and women in the access to and supply of goods and services, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32004L0113>.

⁹⁷ 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), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32006L0054>.

⁹⁸ 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), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32006L0054#>.

⁹⁹ Council Directive 79/7/EEC on the progressive implementation of the principle of equal treatment for men and women in matters of social security, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31979L0007>; Directive 2010/41/EU on the application of the principle of equal treatment between men and women engaged in a self-employed capacity and repealing Council Directive 86/613/EEC, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32010L0041>; Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31992L0085>; Council Directive 2010/18/EU implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32010L0018>.

the recently adopted Directive 2019/1158/EU on work-life balance for parents and carers¹⁰⁰ aims to increase women's participation in the labour market and to achieve a better sharing of caring responsibilities between men and women.

On 5 March 2020, the European Commission adopted the European Gender Equality Strategy 2020-2025,¹⁰¹ which includes, notably, targeted policy areas for improvement, such as violence against women; challenging gender stereotypes; pay transparency and the gender pay gap, etc. New issues are also raised, such as gender equality in the context of climate change and artificial intelligence.¹⁰²

2.2.1.5. Discrimination based on sexual orientation

Discrimination against LGBT+ people may take various forms, including verbal abuse and physical violence. Sexual orientation is now recognised in EU law as a ground for discrimination, since the Charter of Fundamental Rights of the European Union, - which, under the Lisbon Treaty, has the same legal value as the EU Treaties -, explicitly recognised it as such for the first time in an international charter (Article 21(1)). However, sexual orientation acquired this status only recently. Until the 1999 Treaty of Amsterdam, the relevant EC Treaty provisions addressed discrimination on the grounds of nationality and sex only. At the same time, the case law of the Court of Justice of the European Union (CJEU) defining the scope of the general principle of equality was not uniform – whether discrimination based on sexual orientation was prohibited under this principle remained contentious.

In addition, there is a notable difference in the scope of application of the two landmark “anti-discrimination” directives adopted in 2000 as far as discrimination on the ground of sexual orientation is concerned. While the Racial Equality Directive (RED) has a very broad scope, as it obliges member states to adopt antidiscrimination legislation in the areas of social protection, education, and access to and the supply of goods and services available to the public, its scope is limited to equal treatment, irrespective of racial or ethnic origin. On the other hand, the Employment Equality Directive (EED) targets discriminations on the grounds of sexual orientation, but its scope is restricted to employment, occupation and vocational training. However, LGBT+ people also experience various forms of discrimination in the areas covered by the RED and these differences in the scope of protection leave them particularly vulnerable in these areas. In 2008, the European Commission sought to remedy the situation by making a proposal for a new horizontal directive that would extend the prohibition of discrimination on the grounds of religion or belief, disability, age or sexual orientation beyond employment. However, as mentioned earlier, this proposal has so far remained blocked in the Council.

In November 2020, the European Commission presented the first-ever EU strategy for LGBT+ equality, in view of the remaining challenges. The LGBTIQ Equality Strategy

¹⁰⁰ Directive (EU) 2019/1158 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32019L1158>.

¹⁰¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2020%3A152%3AFIN>.

¹⁰² For more details, see also the activities carried out by the European Institute for Gender Equality (EIGE), at <https://eige.europa.eu/>.

2020-2025¹⁰³ sets out a number of targeted actions, including legal and funding measures, for the next five years. It proposes to extend the list of EU crimes to cover hate crime, including homophobic hate speech and hate crime, and to bring forward legislation on the mutual recognition of parenthood in cross-border situations, among other things. It also ensures that the concerns of LGBT+ people are well reflected in EU policy-making, so that LGBT+ people, in all their diversity, are safe and have equal opportunities to prosper and fully participate in society. In addition, member states are encouraged to build on existing best practices and develop their own action plans on LGBT+ equality.

2.2.1.6. EU disability framework

According to EU sources, by 2020, one fifth of the EU population is expected to have some form of disability.¹⁰⁴ The rights of persons with disabilities have been enshrined in the EU treaties since 1997 (e.g. Article 19 of the TFEU which stipulates that the Union shall aim to combat discrimination based on disability). It provided the legal basis for the above-mentioned Employment Equality Directive 2000/78/EC (EED), which is generally considered a milestone for the development of EU disability law. Since its entry into force in December 2000, the EED has prohibited any type of discrimination or harassment in the workplace on the grounds of disability. The scope of the EED is comprehensive, covering the entire work life cycle from job application and recruitment through to dismissal. The EED requires that reasonable accommodation, including workplace adaptations, be made in favour of persons with disabilities. The EED recognises that the failure to provide “reasonable accommodation” in the workplace could constitute discrimination, which, in particular, constituted a conceptual novelty. Concerning the minimum health and safety requirements for the workplace, the issue of specific measures that need to be taken to meet the needs of workers with a disability (for example, adapting doors, passageways, etc.) is addressed in the 1989 Directive on Health and Safety at Work and reiterated in the European Pillar of Social Rights (Principle 17, see below).

At around the same time as the entry into force of the EED, in December 2000, the European Union reinforced its commitment to equality, non-discrimination and respect for the rights of people with disabilities through the EU Charter of Fundamental Rights. In particular, the Charter sets out rights and principles, and contains specific provisions on equality before the law (Article 20), non-discrimination (Article 21) and the professional and social integration of persons with disabilities (Article 26).

A decade later, EU disability law was further shaped by the UN Convention on the Rights of Persons with Disabilities (CRPD), which the European Union concluded in December 2010 as a regional integration organisation. With its entry into force on 22 January 2011 (for the European Union), the CRPD became part of the EU legal order. It is a mixed agreement, meaning that the European Union and its member states share competences and responsibility for implementing the provisions of the Convention. The CRPD is legally binding on the European Union within the extent of its competences, as well as on its member states, all of whom have now ratified it. Consequently, EU and

¹⁰³ LGBTIQ Equality Strategy 2020-2025, https://ec.europa.eu/info/files/lgbtiq-equality-strategy-2020-2025_en.

¹⁰⁴ <https://ec.europa.eu/social/main.jsp?catId=1137>.



national disability policies and legislations must be in compliance with the CRPD. In light of its status, the CRPD has been termed as “the benchmark for European Union disability policy.”¹⁰⁵

The EU disability policy has since been further developed by the EU Disability Strategy (EDS) 2010–2020,¹⁰⁶ which aims to secure an inclusive, barrier-free Europe. The strategy has prompted the adoption of a range of specific acts of secondary legislation and other actions within the ambit of its priority areas, which include accessibility, equality, education and employment. The EDS 2010–2020 has led to initiatives such as the European Accessibility Act,¹⁰⁷ which sets accessibility requirements for products and services,¹⁰⁸ or the Directive on Web Accessibility,¹⁰⁹ which makes public websites accessible to all. The current EDS came to an end in the year 2020, and it is currently under review by the European Commission in order to adapt the EDS 2020–2030 for the next decade. Moreover, the social and labour inclusion of persons with disabilities is addressed in the European Pillar of Social Rights,¹¹⁰ launched in November 2017 as a (legally non-binding) reform compass for economic and social convergence (Principle 17). Lastly, the European structural and investment funds¹¹¹ (ESI funds) provide specific funding for people with disabilities,¹¹² and more equal opportunities are created for disadvantaged groups, such as people with disabilities (e.g. by declaring certain categories of aid, such as those to support employment or training for people with disabilities, compatible with the internal market).¹¹³

2.2.2. Gender diversity and inclusion in the audiovisual sector

The European Commission has recognised the strategic importance of gender equality and diversity to sustain a rich, highly creative audiovisual industry, as well as more open, inclusive and competitive societies. With the exception of the EU Directive on Audiovisual Media Services, the intervention of the European Union on issues of diversity and inclusion

¹⁰⁵ For further information, please refer to Employment and disability in the European Union, EPRS, [https://www.europarl.europa.eu/thinktank/de/document.html?reference=EPRS_BRI\(2020\)651932](https://www.europarl.europa.eu/thinktank/de/document.html?reference=EPRS_BRI(2020)651932).

¹⁰⁶ European Disability Strategy 2010–2020, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3Aem0047>.

¹⁰⁷ Directive (EU) 2019/882 on the accessibility requirements for products and services (Text with EEA relevance), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019L0882>.

¹⁰⁸ Regulation (EC) No. 1107/2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air (Text with EEA relevance), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32006R1107>.

¹⁰⁹ Directive (EU) 2016/2102 on the accessibility of the websites and mobile applications of public sector bodies (Text with EEA relevance), <https://eur-lex.europa.eu/eli/dir/2016/2102/oj>.

¹¹⁰ European Pillar of Social Rights, https://ec.europa.eu/commission/sites/beta-political/files/social-summit-european-pillar-social-rights-booklet_en.pdf.

¹¹¹ European structural and investment funds, https://ec.europa.eu/regional_policy/en/funding/.

¹¹² The most relevant fund in the context of this report is the European Social Fund (ESF), which supports employment-related projects fostering integration in the labour market and improving the accessibility of workplaces, <https://ec.europa.eu/esf/home.jsp>.

¹¹³ Commission Regulation (EU) No. 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty Text with EEA relevance, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2014.187.01.0001.01.ENG.

in the audiovisual sector has, first and foremost, focused on off-screen issues and most often on a cross-sectoral basis. This is due in part to the fact that regulatory action in media content, such as sexism and stereotypical gender portrayal in media content, has been a competence of the member states.

2.2.2.1. Non-discrimination and accessibility to audiovisual content under the AVMS Directive

In the audiovisual sector, EU Directive 2018/1808 on Audiovisual Media Services (AVMSD)¹¹⁴ addresses the issue of discriminations from a content perspective, through the prohibition of content inciting to violence or hatred directed against groups or a member of a group based on any of the grounds referred to in Article 21 of the Charter (Article 6 AVMSD).

The AVMSD has also provided, since its very first version, the 1989 “Television Without Frontiers” Directive,¹¹⁵ for the principle of non-discrimination in commercial communications. It is interesting to note that, compared to the 1989 version, the scope of the envisaged grounds for discrimination has been extended in line with societal changes. Thus, to the grounds of discrimination based on sex, race and nationality have been added those based on ethnic origin, religion or belief, disability, age or sexual orientation (Article 9(c)(ii) AVMSD).

Furthermore, it is worth noting that the AVMSD addresses the issue of the inclusion of persons with a disability and of the elderly through improved accessibility to audiovisual media services as a means to participate and be integrated in the social and cultural life of the Union. In particular, member states are required to ensure that audiovisual media service providers under their jurisdiction actively seek to make content accessible to persons with disabilities, in particular those with a visual or hearing impairment, through accessibility action plans and effective monitoring (Article 7 AVMSD). The means to achieve the accessibility of audiovisual media services should include, but need not be limited to, sign language, subtitling for the deaf and hard of hearing, spoken subtitles, and audiodescriptions. However, the AVMSD does not cover features or services providing access to audiovisual media services, nor does it cover the accessibility features of electronic programme guides (EPGs).

Finally, the AVMSD reaffirms the role of national regulatory authorities in relation to the objectives of accessibility and non-discrimination,¹¹⁶ and entrusts the European Regulators Group for Audiovisual Media Services (ERGA) with the task of exchanging

¹¹⁴ Directive (EU) 2018/1808 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities, <https://eur-lex.europa.eu/eli/dir/2018/1808/oj>.

¹¹⁵ Council Directive 89/552/EEC on the coordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31989L0552>.

¹¹⁶ See also ERGA Study on Industry-led Good Practices related to Gender Diversity in the European Audiovisual Sector, ERGA SG4 – Report on Gender diversity.

experiences and best practices on accessibility and media literacy, among other areas (Article 30 AVMSD).

2.2.2.2. European Parliament Resolution on gender equality in the media sector

On 17 April 2018, the European Parliament adopted a Resolution specifically addressing the issue of gender equality in the media sector in the European Union.¹¹⁷ The Recommendation addresses the issues of both women's presence in the media and of women in media content. Regarding off-screen representation, the European Parliament calls on member states and media organisations to develop incentive measures, such as quotas for the equal representation of women and men in decision-making posts, internal equal opportunities and diversity policies, binding measures by regulatory authorities for increased transparency on gender pay gap, or the creation of databases of women experts by media organisations. In relation to media content and women, the Resolution calls on the member states to promote content on gender equality in the public media and alerts them to the risks posed by a degrading portrayal of women and LGBT+ and gender stereotyping in media content. A range of soft measures are fostered, such as media literacy initiatives or gender equality plans in media organisations for the positive portrayal of women in advertising, news, reporting, production or broadcasting. The Resolution also recommends that regulatory authorities set out the criteria guaranteeing stereotype-free portrayals of women and girls and that they include the possibility of removing or suspending offensive content. The need for data collection and monitoring is highlighted, as well as the need for self- and co-regulation and the exchange of good practices.

2.2.2.3. Other resolutions on gender portrayal and stereotyping in the media

Other resolutions from the European Parliament and the EU Council concerning gender equality in the media have been adopted in recent years. The following table gives an overview of those which more specifically address gender portrayal and stereotyping in the media:

Table 3. Overview of Council resolutions and conclusions on gender equality in the media sector, with a special focus on gender portrayal and stereotyping in the media

Year	Resolutions and conclusions	Main topics addressed
1995	Council Resolution of 5 October 1995 on the image of women and men portrayed in advertising and the media ¹¹⁸	Calling for action to promote a diversified and realistic picture of the skills and potential of women and men in society and its related implementation.

¹¹⁷ European Parliament resolution of 17 April 2018 on gender equality in the media sector in the European Union (2017/2210(INI)), https://www.europarl.europa.eu/doceo/document/TA-8-2018-0101_EN.html.

¹¹⁸ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A41995X1110%2801%29>.



Year	Resolutions and conclusions	Main topics addressed
1997	EP Resolution of 25 July 1997 on discrimination against women in advertising ¹¹⁹	Calling on member states to conclude international pacts and conventions, to pass laws and exchange practices on non-discrimination. Calling on the advertising industry and the media to refuse sexist stereotypes; to balance the participation of women and men at the production and decision-taking levels; and to develop codes of ethics and self-regulatory codes. Calling on the European Commission and umbrella organisations to collect data and run awareness campaigns.
2008	Council Conclusions of 9 June 2008 on eliminating gender stereotypes in society ¹²⁰	Calling on the member states and the European Commission to reinforce, implement and monitor gender mainstreaming strategies to eliminate gender stereotypes in education and culture, training, vocational guidance, and on the labour market; awareness-raising campaigns and the exchange of best practices; the strengthening of cooperation with social partners, to reduce gender gaps on the labour market; dedicate appropriate funding, etc.
2008	EP Resolution of 3 September 2008 on how marketing and advertising affect equality between women and men ¹²¹	Calling on the Council, Commission and member states to exploit and disseminate research on gender stereotyping in advertising and gender inequality; to implement and monitor guidelines and EU law on sex discrimination and incitement to hatred on the grounds of sex; and to develop awareness-raising actions against sexist insults or degrading images of women and men in advertising and marketing. Calling on the member states to ensure that marketing and advertising are not discriminatory nor contain incitement to hatred based on sex, racial or ethnic origin, religion, etc.; to encourage the sharing of best practices by media regulator, etc..
2013	EP Resolution of 12 March 2013 on eliminating gender stereotypes in the EU ¹²²	Calling on the Commission and the member states to make efficient use of public funding to counter gender stereotyping and support work-life balance measures, etc.; to conduct awareness campaigns on gender stereotypes in the media; to collect data and promote good practices concerning women and the media. Calling on the EU and the member states to provide education and training; to conduct active policies to deconstruct stereotypes, etc..
2016	EP Resolution of 28 April 2016 on gender equality and empowering women in the digital age ¹²³	Calling on the Commission and the member states to make better use of digitalisation for women's inclusion in decision-making processes; to promote gender equality in the ICT sector; to promote digital literacy; to promote investment and funding entrepreneurship; to fight against violence against women in a digitalised world.

¹¹⁹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AC%3A1997%3A304%3ATOC>.

¹²⁰ http://www.eu2008.si/si/News_and_Documents/Council_Conclusions/June/0609_EPSCO-Gender.pdf.

¹²¹ <https://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2008-0401+0+DOC+XML+V0//EN>.

¹²² https://www.europarl.europa.eu/doceo/document/TA-7-2013-0074_EN.html?redirect.

¹²³ https://www.europarl.europa.eu/doceo/document/TA-8-2016-0204_EN.html.

2.2.3. EU programmes and initiatives

The Creative Europe MEDIA is committed to bringing these issues to the fore through a number of measures currently under discussion, such as how to introduce a horizontal criterion in the next MEDIA programme regarding gender balance and diversity. Creative Europe MEDIA also supports initiatives such as the Women Pioneers in European Cinema project, initiated by the EWA (the European Women's Audiovisual Network).¹²⁴ Some initiatives have also been taken in the digital sector. Thus, the European Commission has, for example, drawn up a declaration to encourage companies to adopt a hands-on approach to closing the digital gender divide in skills, encouraging the inception of technologies, and improving access to career opportunities.¹²⁵ In addition, the European Commissioner for Digital Economy and Society has put in place a strategy striving to encourage and empower women to play a more active role in the digital age, for example by challenging digital gender stereotypes or advocating for more women entrepreneurs.¹²⁶ Such actions include, for example, a tool called the Women in Digital Scoreboard (WID Scoreboard),¹²⁷ which monitors women's participation in the digital economy and society. In addition, 27 EU ministers and member states' representatives plus Norway signed a Declaration of commitment on Women in Digital¹²⁸ at Digital Day on 9 April 2019.¹²⁹

2.3. Sectoral initiatives

In addition to the applicable obligations stemming from the international and national legal framework described in Chapters 2 and 3 of this publication, a growing number of initiatives and recommendations have been taken in recent years by the pan-European networks of national public bodies operating in the audiovisual sector (as a regulator or funding agency). Recommendations and initiatives have been focusing first and foremost on gender parity, although in recent years, they have broadened their approach to englobe broader diversity.

2.3.1. Initiatives from the EFAD

While European film funds are increasingly collecting and publishing data on the gender breakdown of funding and some are putting in place strategies to correct gender imbalances and prevent violence and sexual harassment in the sector, the European Film Agency Directors association (EFAD) – gathering together film funding bodies from 34 European countries – has created, in 2017 a Working Group dedicated to exchanging

¹²⁴ https://creative-europe-desk.de/files/downloads/Creative_Europe_Supporting_Gender_Balance_2019.pdf.

¹²⁵ https://ec.europa.eu/newsroom/dae/document.cfm?doc_id=52998.

¹²⁶ <https://ec.europa.eu/digital-single-market/en/women-digital-0>.

¹²⁷ <https://ec.europa.eu/digital-single-market/en/women-digital-scoreboard>.

¹²⁸ https://ec.europa.eu/newsroom/dae/document.cfm?doc_id=58562.

¹²⁹ For further details, please see: <https://ec.europa.eu/digital-single-market/en/news/digital-day-2019#:~:text=Digital%20Day%20has%20been%20a,our%20economies%20and%20our%20societies>.

information and best practices. The scope of the Working Group was expanded in February 2020 to include broader aspects of diversity and inclusion, and it was renamed the Gender and Inclusion Working Group. The Working Group has identified a series of initiatives in recent years, such as:¹³⁰

- Ensuring parity in selection committees, organising festivals and raising awareness on gender bias;
- Adjusting film support schemes (for example, granting a gender bonus or additional points for eligibility or award criteria, distributing a larger amount of aid, using the Bechdel test,¹³¹ etc.)
- Creating specific schemes to support women's projects;
- Supporting national and European associations for gender equality

2.3.2. Initiatives from the EPRA

On the audiovisual regulators' side, the European Platform of Regulatory Authorities (EPRA), in which 54 national regulatory authorities (NRAs) from 47 countries in Europe are represented, has also given emphasis to gender equality and diversity issues in its work programme over the last few years. In particular, the EPRA established a Working Group on Gender issues in broadcasting in 2018, whose findings were presented, in September 2018, to European Commissioner Mariya Gabriel in a report entitled "Achieving greater diversity in broadcasting: benefits and best practices approaches." The report aimed to provide an overview of the different roles and approaches by NRAs in promoting gender representation and portrayal both on and off screen, and to raise some points for regulators to consider.¹³²

2.3.3. Initiatives from the ERGA

Building on EPRA's work, in 2019, the European Regulators Groups for Audiovisual Media Services (ERGA) – bringing together heads or high level representatives of NRAs from across the European Union – established a Sub-Group on Gender Diversity aimed to develop a framework for the implementation of good industry-led practices and to gather indicators on gender equality. The final report of the Sub-Group, published in July 2020, analyses existing approaches at stake in the industry and includes some recommendations such as:¹³³

¹³⁰ Some example of initiatives taken by national film funds are detailed in Chapter 3 of this publication.

¹³¹ The Bechdel Test, or Bechdel-Wallace Test, sometimes called the Mo Movie Measure or Bechdel Rule, is a simple test which names the following three criteria: (1) it has to have at least two women in it, (2) who talk to each other, (3) about something besides a man. The test was popularised by Alison Bechdel's comic, <https://bechdeltest.com/>.

¹³² Jones, J. (Ofcom, UK), *Achieving Greater Diversity in Broadcasting – special focus on Gender; benefits and best practices approaches*, EPRA, 4 September 2018, <https://cdn.epra.org/attachments/files/3356/original/EPRA-Gender-Report-FINAL.pdf?1537262554>.

¹³³ ERGA Study on Industry-led Good practices related to Gender Diversity in the European Audiovisual Sector, ERGA http://erga-online.eu/wp-content/uploads/2020/01/ERGA_2019_SG4_Report.pdf.



- Encouraging public authorities to set specific targets on gender equality in audiovisual laws; fostering data collection and monitoring; allocating funding to studies on gender diversity in the screen industries;
- Encouraging content and media service providers to consider gender balance during all stages of writing, development and production;
- Encouraging the advertising industry to develop charters to promote un-stereotyped advertising;
- Encouraging audiovisual media providers to adopt specific targets related to gender diverse representation and to develop gender-related statistics in human resources;
- Encouraging funding bodies to create financial incentives for diverse projects and to ensure diversity in selection panels; promoting training on unconscious bias for members of panels, producers and commissioners; monitoring key content creators by gender.

Finally, the report suggests a set of common performance indicators for NRAs who are willing to develop monitoring activities or research projects in the field of gender diversity, with the objective of helping to carry out comparative studies both at national and European level.

3. National

3.1. Sectoral legislation concerning broadcasting and VOD

When it comes to the way diversity and inclusion is regulated in the broadcasting and VOD sectors, each country is simply different. The actual role and place of women in society depends on the history and culture of each country, and the same could be said about LGBT+ people or people with disabilities. With regard to race and ethnic groups, some countries are more racially diverse than others. Also, the broadcasting and VOD sectors are more developed in certain countries than in others. All these circumstances are reflected in the way each country deals with the issue of diversity and inclusion.

National regulatory authorities (NRAs) have a central role in the regulation and monitoring of diversity and inclusion in the broadcasting and VOD sectors. According to a comparative background paper¹³⁴ prepared for the European Platform of Regulatory Authorities (EPRA) with special focus on gender, there are significant differences in the responsibilities that regulators across Europe have in relation to improving gender representation in the media sector, and how those responsibilities are addressed. The majority of respondents to a questionnaire circulated within EPRA stated that NRAs do not have explicit powers in the field of off-screen representation, and instead rely on general Equality Law provisions. With regard to on-screen representation, the majority of EPRA respondents (19 out of 31) cited national provisions derived from the transposition of Article 6 AVMSD¹³⁵ relating to the portrayal of women on television. However, according to the EPRA paper, the AVMSD does not cover more subtle forms of gender discrimination which are arguably more prevalent in television programming.¹³⁶ In addition, some regulatory authorities do not have any competence in relation to improving gender representation in the media sector. Concerning advertising, 13 out of 31 respondents cited having in place national provisions which prohibit discrimination based on sex, directly

¹³⁴ Jones J. (Ofcom (UK)), "47th EPRA Meeting, Luxembourg, 23-25 May 2018, Working Group II Achieving greater diversity in broadcasting - special focus on gender; Benefits and best practice approaches, Comparative background paper", Final public version of 4 September 2018, <https://cdn.epra.org/attachments/files/3356/original/EPRA-Gender-Report-FINAL.pdf>.

¹³⁵ See section 2.2.7 of this publication. For a country-by-country description of the national transposition of Article 6 AVMSD see:

<http://avmsd.obs.coe.int/sharedSearch/eyJmdWxsVGV4dCI6bnVsbCwiZGlyZWNoaXZlcyI6WzZM5XSwiY291bnRyYWZlIjpbXSwidmVyc2lvbiI6MiwYmVnaW5EYXRlIjpuZDwxsLClbmREYXRlIjpuZDwxsLClkaXNwbGF5TW9kZSI6MiwibGFuZ3VhZ2UiOjF9>

¹³⁶ For example, according to research commissioned by Channel 4 in the United Kingdom, while the most serious forms of sexism have been eradicated from British TV, "low-level sexism" continues to thrive on screen. There are 5 sexist incidents per hour, at peak time, on each channel; 72% of these incidents are directed at women and 28% at men. Women are 5 times more likely to be the object of sexism. Sexual/physical objectification is the most frequent incident, and comedy has the highest number of incidents, proportionately. https://www.channel4.com/media/documents/corporate/C4GENDERRESEARCH_2016.pdf.

transposed from Article 9(1)(c) AVMSD.¹³⁷ Again, the EPRA report remarks that more subtle forms of gender inequality are not overtly discriminatory and are therefore unlikely to be subject to these provisions. Having said all that, while some of the legislative provisions mentioned by respondents do not refer to gender specifically, this does not mean that gender issues are side-lined as a result. The EPRA report notes, on the one hand, that a lack of formal powers or obligations in this domain is not necessarily a predictor for how much action is taken in the country; on the other hand, some regulators with formal powers or obligations do not report any specific initiatives designed to improve representation and portrayal. Several respondents also emphasised the specific requirements introduced by the licence conditions and contracts of public service broadcasters to improve both on-screen and off-screen gender representation.

The EPRA report highlights that the levels of measurement and evaluation of these initiatives are very varied, and in the majority of cases there appears to be little real measurement of their effectiveness. This lack of assessment is even more pronounced in the case of off-screen initiatives, although some regulators expressed a commitment to developing these aspects in the future. Success also varied among those who had carried out some degree of measurement, with some regulators citing improvements, while others pointed to a decrease in representation.

Finally, the EPRA report highlights that some regulators appear to be vested with more specific and wide-ranging powers than the majority of their counterparts, notably in the United Kingdom, France, Spain and the French-Speaking Community of Belgium. The following paragraphs describe the systems of these countries in more detail.

3.1.1. United Kingdom

The Communications Act 2003¹³⁸ requires broadcasters to make arrangements for promoting equal opportunities in employment between men and women, people of different racial groups and for disabled people. Equality of opportunity and diversity in the broadcasting industry are also important in terms of other protected characteristics in the Equality Act 2010,¹³⁹ like age, sexual orientation, religion or belief, pregnancy and maternity, and gender reassignment, and also with respect to social, educational and geographic background.¹⁴⁰

¹³⁷ See section 2.2.7 of this publication. For a country-by-country description of the national transposition of Article 9(1)(c) AVMSD see:

<http://avmsd.obs.coe.int/sharedSearch/eyJmdWxsVGV4dCI6bnVsbCwiZGlyZWNoaXZlcyI6Wz00XSwiY291bnRyaWVzIjpbXSwidmVyc2lvbiI6MiwYmVnaW5EYXRlljpuWxsLClIbmREYXRlljpuWxsLClkaXNwbGF5TW9kZSI6MSwibGFuZ3VhZ2UiOjF9>

¹³⁸ Communications Acts 2003 (revised), <https://www.legislation.gov.uk/ukpga/2003/21/contents>.

¹³⁹ Equality Act 2010 (revised), <https://www.legislation.gov.uk/ukpga/2010/15/contents>. Equality Act 2010: guidance, <https://www.gov.uk/guidance/equality-act-2010-guidance>.

¹⁴⁰ For more information on the implementation of the Equality Act see: <https://www.equalityhumanrights.com/en>.



The UK regulator Ofcom¹⁴¹ is required under the Communications Act 2003 and the Broadcasting Act 1996¹⁴² to draw up a code for television and radio (the so-called Ofcom Broadcasting Code),¹⁴³ covering standards in programmes, sponsorship, product placement in television programmes, fairness and privacy. UK licensed television and radio broadcasters must make arrangements for promoting equal opportunities and, in making and reviewing those arrangements, they must have regard to any relevant guidance published by Ofcom.

3.1.1.1. Off-screen requirements in the United Kingdom

Under the Communications Act 2003, Ofcom¹⁴⁴ is required to:

- take appropriate steps for promoting equality of opportunity between men and women, people of different racial groups and for disabled people in relation to employment and training/retraining by the television and radio broadcasters it regulates (Section 27 Communications Act); and
- set licence conditions requiring broadcasters to promote equality of opportunity between men and women, people of different racial groups and for disabled people. This includes making affected people aware of the arrangements, reviewing the arrangements, and publishing observations on the operation and effectiveness of the arrangements at least annually (Section 337 Communications Act).

Television and radio broadcasters are required to make arrangements for:

- promoting equality of opportunity in employment between men and women, people of different racial groups and for disabled people; and
- training or retraining people employed in or in connection with the provision of the licensed service.

In making these arrangements, broadcasters must:

- have regard to Ofcom's guidance on diversity in broadcasting; and
- make affected people aware of these arrangements, review the arrangements from time to time, and publish observations at least annually on their operation and effectiveness.

These obligations only apply to broadcasters who employ more than twenty people in connection with the provision of licensed services, and who are authorised to broadcast for

¹⁴¹ Ofcom is the United Kingdom's regulator for the TV, radio and video on demand sectors, fixed line telecoms, mobiles, postal services, plus the airwaves over which wireless devices operate, <https://www.ofcom.org.uk/about-ofcom>.

¹⁴² Broadcasting Act 1996 (revised), <https://www.legislation.gov.uk/ukpga/1996/55/contents>.

¹⁴³ <https://www.ofcom.org.uk/tv-radio-and-on-demand/broadcast-codes/broadcast-code>.

¹⁴⁴ Overview of Ofcom's diversity in broadcasting remit: <https://www.ofcom.org.uk/tv-radio-and-on-demand/information-for-industry/guidance/diversity/ofcoms-role/overview-of-diversity-in-broadcasting-remit>.

more than 31 days a year. The BBC is also required to make arrangements for promoting equality of opportunity in relation to disability, race and sex.¹⁴⁵

Ofcom's tasks include the following:

- monitoring broadcasters' workforces and equal opportunities arrangements;
- collecting information on broadcasters' employees in terms of sex, race and disability on a mandatory basis;
- collecting information on other protected characteristics set out in the Equality Act 2010 (religion or belief, sexual orientation and age), as well as social and economic background, on a voluntary basis;
- holding broadcasters to account in Ofcom's annual reports on the make-up of their workforces;
- providing guidance for broadcasters on making their equal opportunities arrangements. This guidance can also help broadcasters make arrangements to promote equal opportunities in relation to the other protected characteristics under the Equality Act 2010 not captured by the Communications Act 2003;
- holding regular industry events and discussions in order to share ideas and work collaboratively to make faster progress on promoting equality of opportunity in broadcasting;
- taking enforcement action against broadcasters if they do not comply with their licence conditions.

Ofcom does not, however, have legal powers to:

- set and/or enforce quotas or targets for diversity in broadcasting;
- require the provision of data on the freelance broadcasting workforce;
- manage or enforce ring-fenced or contestable funding; or
- handle complaints relating to workforce diversity.

According to Ofcom's guidance document,¹⁴⁶ there are different ways in which different organisations can achieve equal opportunities and their promotion. However, Ofcom considers good practice to have in place three key elements:

- a formal written equal opportunities policy statement;
 - communication of that policy to employees and embedding it from the top down;
- and

¹⁴⁵ These requirements are set out in Schedule 3 of the BBC Agreement, see An Agreement Between Her Majesty's Secretary of State for Culture, Media and Sport and the British Broadcasting Corporation - Presented to Parliament by the Secretary of State for Culture, Media and Sport by Command of Her Majesty, December 2016,

http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/about/how_we_govern/2016/agreement.pdf.

¹⁴⁶ See Ofcom, "Guidance: Diversity in Broadcasting - Arrangements for the promotion of equal opportunities in the broadcast industry",

https://www.ofcom.org.uk/_data/assets/pdf_file/0020/147710/Diversity-in-broadcasting-guidance.pdf.

- an effective monitoring system, which should be able to provide information on the impact that a broadcaster's equal opportunities policy is having on the diversity of its organisation.

Furthermore, Ofcom expects to see broadcasters setting diversity targets and taking active steps to ensure fair recruitment practices.

3.1.1.2. On-screen requirements in the United Kingdom

Broadcasters must comply with the Ofcom Broadcasting Code's rules concerning the application of generally accepted standards to the content of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of harmful and/or offensive material. Ofcom can take enforcement action if a broadcaster does not comply with the rules in the Ofcom Broadcasting Code.

Ofcom also carries out research¹⁴⁷ looking at what audiences think about diversity and inclusion in broadcasting.

3.1.1.2.1. Additional requirements for public service broadcasters in the United Kingdom

Public service broadcasters (PSBs) have to comply with additional requirements regarding diversity and inclusion. As such, Ofcom regularly reviews the contribution that the PSBs have made to the statutory public service broadcasting purposes and objectives, which include reflecting the diversity of the United Kingdom in their programming.

3.1.1.2.1.1. *Made outside London requirements*

Ofcom must ensure that a suitable proportion of the productions commissioned by the PSBs for UK-wide television broadcasts are made in the United Kingdom outside of the M25, and additionally for the BBC, in the nations. Ofcom has imposed quotas on the minimum proportion of hours and expenditure that must be allocated to regional productions.

Moreover, Ofcom sets quotas for regional programming for BBC One, BBC Two and the Channel 3 services (ITV and STV) to ensure that a suitable amount of time is given to regional programming of particular interest to people living in the geographic area where the service is provided.¹⁴⁸

¹⁴⁷ <https://www.ofcom.org.uk/tv-radio-and-on-demand/information-for-industry/guidance/diversity/why-diversity-matters>.

¹⁴⁸ <https://www.ofcom.org.uk/tv-radio-and-on-demand/information-for-industry/tv/regional-production-programming#:~:text=To%20help%20promote%20TV%20production,made%20outside%20of%20the%20M25>.

3.1.1.2.1.2. *Wider diversity obligations*

The BBC¹⁴⁹ and Channel 4 Corporation¹⁵⁰ have additional diversity-related obligations:

- The BBC's Charter requires the BBC to reflect, represent and serve the diverse communities of all of the United Kingdom's nations and regions. Ofcom has set a number of diversity-related conditions in the BBC Operating Licence, including a requirement to produce a Diversity Commissioning Code of Practice and to report to Ofcom annually on compliance with this code of practice. The BBC must also report annually on:
 - how it has reflected, represented and served the diverse communities of the whole of the United Kingdom;
 - its progress towards meeting its own on-screen representation and/or portrayal targets;
 - its audience satisfaction data; and
 - the diversity of all its staff (employees and freelance) employed in connection with the provision of the UK public services.
- Channel 4 has a statutory remit which includes providing a broad range of high-quality and diverse programming that appeals to the tastes and interests of a culturally diverse society. The Digital Economy Act 2010¹⁵¹ extended Channel 4 Corporation's obligations beyond the main channel by introducing a range of media content duties which can be delivered across all of its services. This includes requirements to make a broad range of high-quality content that appeals to the tastes and interests of a culturally diverse society and to support the development of people with creative talent.

3.1.2. France

Article 3-1 of the law of 30 September 1986, relating to the freedom of communication¹⁵² (the so-called "Loi L  otard"), entrusts the CSA with the mission of ensuring the respect of women's rights in the field of audiovisual communication. The CSA must ensure a fair representation of women and men in the programmes of audiovisual communication services and of the image of women appearing in these programmes, in particular by combatting stereotypes, sexist prejudices, degrading images, violence against women and violence committed within couples. To this end, it must pay particular attention to the programmes of audiovisual communication services aimed at children and young people. Moreover, Article 20-1 A of the Loi L  otard states that PSBs, television services of a national

¹⁴⁹ Ofcom assesses the BBC's performance against its obligations in its BBC annual reports, <https://www.ofcom.org.uk/tv-radio-and-on-demand/information-for-industry/bbc-operating-framework/performance/bbc-annual-report>

¹⁵⁰ Ofcom assesses Channel 4 Corporation's performance against its obligations in its period reviews. For the latest see https://www.ofcom.org.uk/data/assets/pdf_file/0030/192099/channel-4-review-2014-18.pdf.

¹⁵¹ Digital Economy Act 2010 (revised), <https://www.legislation.gov.uk/ukpga/2010/24/contents>.

¹⁵² Loi n   86-1067 du 30 septembre 1986 relative   la libert   de communication (Loi L  otard), <https://www.legifrance.gouv.fr/loda/id/LEGITEXT000006068930/2020-12-17/>.

character, and radio services belonging to a broadcasting network of a national character, broadcast by terrestrial means, must contribute to the fight against sexist prejudices and violence against women by broadcasting programmes relating to these subjects. To this effect, these broadcasters must provide the CSA annually with qualitative and quantitative indicators on the representation of women and men in their programmes and enable the CSA to assess compliance with the objectives set out in Article 3-1.

Article 14 of the Loi Léotard entrusts the CSA with the control, by all appropriate means, over the subject, content and programming modalities of advertising broadcasts. To this effect, it shall ensure respect for the dignity of all persons and for the image of women appearing in such advertising programmes.

Article 3-1 of the Loi Léotard also entrusts the CSA with the mission of contributing to actions in favour of social cohesion and the fight against discrimination in the field of audiovisual communication. Accordingly, the CSA is in charge of ensuring that publishers reflect the diversity of French society in their programming. Each year, the CSA must report to the French Parliament on the actions of publishers in favour of programming that reflects the diversity of French society and propose appropriate measures to improve the representation of this diversity in all programme genres. The CSA also has to ensure that the diversity of French society is represented in the programmes of audiovisual communication services and that this representation is free from prejudice.

It is noteworthy to mention that in France, the preparation of ethnic-based statistics is strictly regulated by Article 6 of the Data Protection Act,¹⁵³ and by a decision made in 2007 by the French Constitutional Council,¹⁵⁴ which forbade the processing of data necessary for carrying out studies regarding diversity which infringe the principle laid down in Article 1 of the French Constitution (equality of all citizens before the law, without distinction of origin, race or religion).¹⁵⁵ According to the Constitutional Council, the following actions are forbidden:

- the processing of data of a personal nature indicating directly or indirectly the racial or ethnic origins of persons;
- the introduction of variables of race or religion in administrative records.

In a commentary to its decision,¹⁵⁶ the Constitutional Council explained that official statistical bodies may carry out studies of diversity of origin, discrimination and integration based on objective data, such as a person's name, geographic origin or nationality before adopting French nationality. Moreover, subjective data, such as that based on the "feeling

¹⁵³ Loi n° 78-17 du 6 janvier 1978 relative à l'informatique, aux fichiers et aux libertés
<https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000886460/2021-01-20/>.

¹⁵⁴ Décision n° 2007-557 DC du 15 novembre 2007,
<https://www.conseil-constitutionnel.fr/decision/2007/2007557DC.htm>.

¹⁵⁵ Constitution du 4 octobre 1958, available in English at:
<https://www.conseil-constitutionnel.fr/en/constitution-of-4-october-1958>.

¹⁵⁶ Commentaire de la décision n° 2007-557 DC du 15 novembre 2007, https://www.conseil-constitutionnel.fr/sites/default/files/as/root/bank_mm/commentaires/cahier24/ccc_557dc.pdf.

of belonging", can also be collected in statistical surveys, and used in the resulting studies.¹⁵⁷

3.1.2.1. Off-screen requirements in France

3.1.2.1.1. Gender

The CSA's Deliberation 2015-2 of 4 February 2015¹⁵⁸ is the result of a consultation with all the television and radio service publishers concerned and with representatives of authors and producers. Concerning human resources, broadcasters may propose voluntary commitments to the CSA to improve the representation of women in their teams:

- Organising training sessions on speaking in the media for women identified as experts (as part of the establishment of their databases of experts);
- Keeping gender balance in the exercise of management positions to be filled, as well as the implementation of an internal organisation to detect talents and potential and to ensure, through specific support measures, the development of their careers.

3.1.2.1.2. Disability

A charter was signed on 11 February 2014 to promote the vocational training and integration of people with disabilities in the audiovisual communication sector.¹⁵⁹ The signatories were the CSA, the ministry in charge of people with disabilities and the fight against exclusion, television channels and radio stations (on a voluntary basis), and training institutions in the audiovisual field. The objectives of the charter are to develop the accessibility of disabled students to educational institutions and the facilities to welcome them there, and to facilitate the access of people with disabilities to employment in audiovisual companies.

¹⁵⁷ For more information see <https://www.insee.fr/en/information/2388586>.

¹⁵⁸ Délibération n° 2015-2 du 4 février 2015 relative au respect des droits des femmes par les sociétés mentionnées à l'article 20-1-A de la loi n° 86-1067 du 30 septembre 1986, <https://www.csa.fr/Reguler/Espace-juridique/Les-textes-reglementaires-du-CSA/Les-deliberations-et-recommandations-du-CSA/Recommandations-et-deliberations-du-CSA-relatives-a-d-autres-sujets/Deliberation-n-2015-2-du-4-fevrier-2015-relative-au-respect-des-droits-des-femmes-par-les-societes-mentionnees-a-l-article-20-1-A-de-la-loi-n-86-1067-du-30-septembre-1986>.

¹⁵⁹ <https://www.csa.fr/Reguler/Espace-juridique/Les-relations-du-CSA-avec-les-editeurs/Chartes/Charte-visant-a-favoriser-la-formation-et-l-insertion-professionnelle-des-personnes-handicapees-dans-le-secteur-de-la-communication-audiovisuelle-11-fevrier-2014>.



3.1.2.2. On-screen requirements in France

3.1.2.2.1. Representation of women

According to the CSA's Deliberation 2015-2 of 4 February 2015, publishers are required to broadcast annually programmes and topics that contribute to the fight against gender bias and violence against women. Such programmes, whatever their form (series of short programmes, single programmes, subjects covered, etc.) and genre (fiction, documentary, debate, etc.), must focus on the fight against sexist prejudices and violence against women. Examples of this are programmes:

- devoid of feminine stereotypes;
- dealing specifically with the issue of equality between women and men;
- highlighting the role and place of women in society or combatting violence against women.

Each year, the publishers shall communicate to the Council the list of these programmes, specifying those broadcast during prime time for television services.

Concerning the indicators relating to the fair representation of women and men and the image of women in programmes, broadcasters of news programmes, magazines, entertainment, sports broadcasts and documentaries must provide the CSA with the following information for each type of programme:

- the number of presenters and/or hosts by sex, and their respective proportions;
- the number of journalists and/or columnists broken down by sex, and their respective proportions;
- the number and proportion of experts in on-air programmes (excluding reports, testimonies or documentaries) by sex;
- the number of other speakers and/or political guests in on-air programmes (excluding reports, testimonies or documentaries) broken down by gender, and their respective proportions.

Moreover, broadcasters of "youth" programmes, audiovisual dramas and so-called reality TV programmes must implement a self-assessment system based on reading grids drawn up by the CSA in cooperation with the High Council for Equality.¹⁶⁰ Each year, broadcasters must send the CSA a list of programmes that can claim to be non-stereotypical in terms of these reading grids. The more positive responses a programme obtains to the questions formulated in the reading schedules, the less stereotyped it is. The choice of how to present this list is at the discretion of the broadcaster, who may choose to present it in an exhaustive manner, specifying the answers obtained for each programme on the list, or to limit it to a list of programmes.

The Deliberation also contains a list of voluntary commitments:

- Programming:

¹⁶⁰ Haut Conseil à l'égalité entre les femmes et les hommes, <https://www.haut-conseil-egalite.gouv.fr>.



- broadcasting audiovisual and cinematographic works made by women, particularly during prime time;
- setting a minimum number of programmes contributing to the fight against sexist prejudices and violence against women to be broadcast during the year, including a proportion of unpublished programmes. A multi-year scale-up may also be envisaged. The guarantee of exposure of all or part of these programmes during prime time could be considered as an additional commitment;
- the production of a short fiction or animation programme, broadcast in the form of an information campaign, the broadcasting methods (period, time slot, frequency, duration) of which are determined in consultation with the CSA;
- the number of items signed by women journalists in information programmes;
- the nature of the items covered by women in news programmes and magazines.

Before 31 January each year, broadcasters must communicate to the CSA the list of programmes contributing to the fight against sexist prejudices and violence against women, all qualitative and quantitative indicators and, where appropriate, its analysis of compliance with the optional commitments of the previous year. In addition, broadcasters may propose to the CSA by letter, no later than 30 November of each year, the optional commitments they make for the following year. Once accepted by the Council, the publisher's proposals shall be deemed to be commitments within the meaning of this resolution.

Each year, the CSA analyses the qualitative and quantitative indicators and proposes progress objectives for the coming year in consultation with the broadcasters concerned. It also examines the implementation of the optional commitments made by broadcasters. A yearly report is prepared by the CSA in which the list of programmes contributing to the fight against sexist prejudices and violence against women, all indicators, progress objectives and optional commitments made by broadcasters are made public.

Concerning the image of women in advertising, on 31 October 2017, the CSA published a study on the image of women in television commercials.¹⁶¹ In this study, the CSA noted the recurrent representation of gender stereotypes, which led to the drafting of a charter of voluntary commitments for the fight against sexual, sexist and gender stereotypes in advertising, which was signed on 6 March 2018.¹⁶²

¹⁶¹ CSA, "Représentation des femmes dans les publicités télévisées", 31 October 2017, <https://www.csa.fr/Proteger/Droits-des-femmes/Mediatiser-le-sport-feminin/Image-des-femmes-dans-la-publicite-televisee-les-decalages-et-stereotypes-persistent-2017>.

¹⁶² Charte d'engagements volontaires pour la lutte contre les stéréotypes sexuels, sexistes et sexués dans la publicité, 6 March 2018, <https://www.csa.fr/Informer/Toutes-les-actualites/Actualites/Retrouvez-la-charte-contre-les-stereotypes-sexistes-dans-les-publicites>.



3.1.2.2.2. Representation of diversity

On 10 November 2009, after consultation with broadcasters, the CSA adopted a deliberation aimed at favouring the representation of the diversity of French society in the programmes of the free national terrestrial channels and Canal+.¹⁶³ On the one hand, this deliberation determines the framework for the commitments that each broadcaster must make to the CSA and, on the other hand, it sets out the terms under which monitoring can be carried out by the CSA.¹⁶⁴

The broadcasters' commitments must be as follows:

- significantly improve the representation of the diversity of French society¹⁶⁵ on TV with regard to the characteristics of their programming;
- propose commitments, according to the specificities of their programming and the shortcomings identified by the television diversity barometers, which may be agreed upon with other publishers, on the following points:
 - Commissioning and production:
 - The broadcaster shall use its best efforts to include in its programme commission contracts a clause providing that the parties shall ensure that the diversity of French society is represented in the programmes that are the subject of such contracts;
 - To this end, the broadcaster shall ensure that, for commissioned fiction, a significant proportion of the roles are performed by actors perceived as contributing to the representation of the diversity of French society, while respecting the historical and literary contexts.
 - On screen:
 - the broadcaster is committed to ensuring that the diversity of French society is represented in all types of aired programmes. It pays particular attention to three types of programmes: French news, entertainment and unreleased French fiction;
 - Its commitments aim to improve the results on one or more of these genres compared to the results obtained in previous barometers;
 - People in charge of information and programmes:
 - broadcasters have to regularly raise awareness among their editorial staff and programme managers of the need to improve the representation of the diversity of French society in their programmes;

¹⁶³ Délibération du 10 novembre 2009 tendant à favoriser la représentation de la diversité de la société française sur les chaînes nationales, <https://www.csa.fr/Reguler/Espace-juridique/Les-textes-reglementaires-du-CSA/Les-deliberations-et-recommandations-du-CSA/Recommandations-et-deliberations-du-CSA-relatives-a-d-autres-sujets/Deliberation-du-10-novembre-2009-tendant-a-favoriser-la-representation-de-la-diversite-de-la-societe-francaise-sur-les-chaines-nationales>.

¹⁶⁴ The Deliberation was modified by decision of the plenary session on 16 September 2015 in order to include radio stations that wish to be subject to it. Thus, any radio publisher who agrees to do so will be subject to deliberation. A modification of their agreement will be necessary to give a conventional value to the annual undertaking of commitments, <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000031557324>.

¹⁶⁵ The diversity of French society is understood in its broadest sense. It concerns in particular socio-professional categories, gender, origin and disability.

- Each year, broadcasters inform the CSA of the practical arrangements for implementing these actions.

The CSA must ensure that the commitments made by the broadcasters are respected, as follows:

- Barometer of Diversity on Television:¹⁶⁶
 - Every six months, the CSA must publish the results of the Barometer on the perception of diversity in French society in the programmes of the free national terrestrial channels and Canal +;
 - The Barometer must indicate the state of perception of the diversity of French society in each broadcaster's programming;
 - The methodological tools used to establish the Barometer are transmitted by the CSA to the broadcasters;
 - The CSA must communicate the results of the Barometer to the broadcasters and will collect their observations;
- Broadcasters' reporting on the implementation of their commitments:
 - By 31 March each year, broadcasters shall provide the CSA with information enabling it to assess compliance with the commitments made for the previous year;
- Additional information communicated by broadcasters:
 - The broadcaster may, by 31 March each year, provide the CSA with any additional information required to assess compliance with the commitments made;
 - The broadcaster may inform the CSA of other initiatives it has taken to promote the representation of diversity in its programmes or in its company.
 - If it wishes to extend the period or time slot covered by the Barometer established by the CSA, it shall use the methodology defined by the CSA;
- Communication of commitments and results:
 - The commitments made by broadcasters pursuant to this decision and the assessment of their fulfilment are made public by the CSA in the report it draws up each year pursuant to Article 3-1 of the Act of 30 September 1986.

3.1.2.2.3. Representation of disability

Since 2009, the CSA has been measuring the progress made by the media concerning the portrayal of disability on television through its annual diversity Barometer. Over the past few years, the CSA has noted the regular use in the audiovisual media services of words or expressions, borrowed from situations of disability, used clumsily and improperly, which could therefore lead to the conveyance of prejudices on disability and/or to hurting persons

¹⁶⁶ In 2007, the CSA set up a Diversity Working Group and a Diversity Observatory, whose aim is to support the CSA by guiding its research and making proposals on all issues related to diversity in the media. After carrying out a study on the representation of diversity on television, the CSA decided to create the Barometer of Diversity on Television in order to regularly measure the progress made by channels. Every year, the CSA submits to Parliament a report on the representation of the diversity of French society on television, based on the results of the Barometer. <https://www.csa.fr/Informer/Collections-du-CSA/Observatoire-de-la-diversite>.



with disabilities. In January 2018, the CSA, with the support of the Secretariat of State in charge of persons with disabilities and in connection with the National Consultative Committee of Persons with Disabilities and the Ministry of Culture, decided to draft a new charter on the media representation of disability. The Charter on the Portrayal of People with Disabilities and Disability in the Audiovisual Media,¹⁶⁷ published in December 2019, is conceived as a guide for audiovisual media services and includes a section on appropriate terms to be used when talking about disability and people with disabilities. The Charter identifies five objectives to be achieved:

- to make the issue of disability more visible through annual progress commitments by the various channels;
- not to assign persons with disabilities to their disability by ensuring that persons with disabilities intervene in the media in an inclusive manner by soliciting their views on all areas of social, political, economic and cultural life, etc;
- change the way people look at disability by presenting disability in a positive and inclusive way, not just through compassionate approaches;
- sharing good practices, using the right words by creating bridges between channels so that they can draw inspiration from each other's good practices and by supporting editorial teams in using the right words when they address disability, particularly by providing a glossary;
- Evaluate the results in the channel reports, which will also be presented at the annual meeting of the monitoring committee.

3.1.3. Spain

The Audiovisual Act¹⁶⁸ aims to promote a more inclusive and equitable society and, specifically with regard to the prevention and elimination of gender discrimination, within the framework of what is established in the area of advertising and the media in Organic Act 1/2004¹⁶⁹ on measures of integral protection against gender violence and Organic Act 3/2007¹⁷⁰ for the effective equality of men and women (“Equality Act”).

The Equality Act puts into practice policies that make effective the principle of equality and the prevention of discrimination.¹⁷¹ It provides a general framework with a

¹⁶⁷ Charte relative à la représentation des personnes handicapées et du handicap dans les médias audiovisuels - Décembre 2019,

<https://www.csa.fr/Reguler/Espace-juridique/Les-relations-du-CSA-avec-les-editeurs/Chartes/Charte-relative-a-la-representation-des-personnes-handicapees-et-du-handicap-dans-les-medias-audiovisuels-Decembre-2019>.

¹⁶⁸ Ley 7/2010, General de la Comunicación Audiovisual, de 31 de marzo,

https://noticias.juridicas.com/base_datos/Admin/l7-2010.html.

¹⁶⁹ Ley Orgánica 1/2004, de Medidas de Protección Integral contra la Violencia de Género, de 28 de diciembre,

https://noticias.juridicas.com/base_datos/Admin/lo1-2004.html.

¹⁷⁰ Ley Orgánica 3/2007, para la igualdad efectiva de mujeres y hombres, de 22 de marzo,

https://noticias.juridicas.com/base_datos/Admin/lo3-2007.html.

¹⁷¹ I Informe sobre la aplicación de la Ley de Igualdad en el ámbito de la cultura dentro del marco competencial del Ministerio de Cultura y Deporte, <http://www.culturaydeporte.gob.es/dam/jcr:067e3922-191c-4687-b880-39d683a4d8cf/informe-de-igualdad.pdf>.

mandate for the adoption of positive and transversal actions, which is reflected in a new arrangement of public policies and action criteria in which all public authorities are involved. The Act introduces various instruments for action within the General State Administration:

- The Strategic Plan for Equal Opportunities (PEIO), an instrument through which the government defines the objectives and priority measures to eliminate any discrimination on the basis of sex. The PEIO is accompanied by an evaluation programme which involves the selection of a set of indicators linked to each of its objectives, making it possible to monitor and evaluate the degree of implementation of the Plan and the results obtained;
- Gender impact reports, which are mandatory and range from legal regulations to plans of special economic and social relevance, and periodic reports or evaluations on the effectiveness of the principle of equality;
- The creation of Equality Units in each ministry;
- The Interministerial Commission for Equality monitors and coordinates the development and application of the Gender Impact Reports and the actions of the Equality Units set up in each ministerial department, as well as the participation of women in representative and management positions in the General State Administration;
- The Council for Women's Participation is attached to the Institute for Women and Equal Opportunities (see below).

Furthermore, a Gender Equality Observatory in the field of Culture¹⁷² was created in 2019 with the following functions:

- sharing and analysing gender information to identify situations of inequality, as well as formulating measures for improvement;
- promoting artistic creation and production, as well as the representation of women in different cultural events;
- ensuring that the balanced participation of women is recognised both on the award panels and in the assessment bodies of the various lines of support, as well as in the various advisory, scientific and decision-making bodies in the artistic and cultural organisation;
- promoting the role of women in the different cultural activities carried out by the Management Centres and Public Bodies dependent on the Ministry of Culture and Sport;
- promoting the preparation of censuses or inventories of experts in gender equality analysis in culture.

¹⁷² <https://www.culturaydeporte.gob.es/actualidad/2019/03/20190304-observatorio.html>.

3.1.3.1. Off-screen requirements in Spain

According to Organic Act 3/2007, the public service broadcaster Corporación RTVE¹⁷³ (Article 37(2)) and the publicly owned news agency EFE Agency¹⁷⁴ (Article 38(2)) shall promote the incorporation of women into positions of managerial and professional responsibility. Likewise, it shall promote relations with women's associations and groups to identify their needs and interests in the field of communication.

3.1.3.2. On-screen requirements in Spain

Article 4(2) of the Audiovisual Act states that audiovisual communications may never incite to hatred or discrimination on grounds of gender or any other personal or social circumstance and must be respectful of human dignity and constitutional values, with special attention to the eradication of conduct that favours situations of inequality of women.

3.1.3.2.1. Gender

Title III of Organic Act 3/2007 deals with equality and the media. Article 39 states that all media (both private and public) shall respect equality between women and men, avoiding any form of discrimination. Public administrations shall promote the adoption by the media of self-regulatory agreements that contribute to compliance with legislation on equality between women and men, including the sales and advertising activities carried out in the media. According to Article 41, advertising which involves discriminatory conduct shall be considered unlawful advertising. Article 3(a) of the Advertising Act¹⁷⁵ declares unlawful any advertising which violates a person's dignity or infringes the values and rights recognised in the Constitution. This provision includes advertisements that present women in a degrading or discriminatory manner, either by using their body or parts of it as a mere object unrelated to the product that is to be promoted, or by associating their image with stereotyped behaviour that contributes to the generation of the violence referred to in Organic Law 1/2004.

The Act deals in more detail with public service media (PSM). Article 36 requires PSM to ensure the provision of an egalitarian, pluralistic and non-stereotyped image of women and men in society and to promote the knowledge and dissemination of the principle of equality between women and men. Both RTVE and EFE must pursue the following objectives in their programming (Article 37(1) and Article 38(1) of the Organic Act 3/2007):

- To adequately reflect the presence of women in the different areas of social life;
- To use language in a non-sexist way;

¹⁷³ <https://www.rtve.es>.

¹⁷⁴ <https://www.agenciaefe.es>.

¹⁷⁵ Ley 34/1988, General de Publicidad, de 11 de noviembre, https://noticias.juridicas.com/base_datos/Admin/l34-1988.html.



- To adopt, by means of self-regulation, codes of conduct designed to convey the content of the principle of equality;
- To collaborate with institutional campaigns aimed at promoting equality between women and men and eradicating gender violence.

According to Article 40, the authorities responsible for ensuring that audiovisual media services fulfil their obligations shall adopt appropriate measures, in accordance with their rules of procedure, to ensure that women are treated in accordance with constitutional principles and values.

The Institute for Women and Equal Opportunities¹⁷⁶ aims to promote equality between women and men in the media, acting in accordance with the objectives of the Equality Plans and the legislation in force. Its actions consist of:¹⁷⁷

- carrying out research, studies and other analytical work in relation to the subject;
- carrying out publicity campaigns aimed at informing and raising awareness of equality between women and men;
- coordinating actions to promote the equal treatment of women and men in advertising and the media;
- managing its Observatory of the Image of Women;¹⁷⁸
- running awareness campaigns;
- organising programmes and activities.

The Institute for Women and Equal Opportunities offers a database with a set of indicators reflecting the situation of women in different areas of society. The tool, called “Women in figures”,¹⁷⁹ allows the publication of an annual report, which in turn contributes to the annual report “Women and Men in Spain”¹⁸⁰ of the National Institute for Statistics.¹⁸¹ The Institute for Women and Equal Opportunities, together with public and private stakeholders in different fields, including that of culture, also organises a set of activities to promote active policies for the employment and self-employment of women and to encourage and develop the transversal application of the principle of equal treatment and non-discrimination on different grounds such as sex, racial or ethnic origin, religion or ideology, sexual orientation or identity, age, birth, disability or any other personal or social condition or circumstances. In particular, two observatories have been set up at national level:

¹⁷⁶ The Instituto de la Mujer y para la Igualdad de Oportunidades (Institute for Women and Equal Opportunities) is an autonomous body attached to the Ministry of the Presidency, Relations with Parliament and Equality, whose functions are to promote and foster the equality of both sexes, facilitating the conditions for the effective participation of women in political, cultural, economic and social life, as well as to promote active policies for the employment and self-employment of women and to encourage and develop the transversal application of the principle of equal treatment and non-discrimination.

<https://www.inmujer.gob.es/elinstituto/conocenos/home.htm>.

¹⁷⁷ <https://www.inmujer.gob.es/areasTematicas/comunicacion/home.htm>.

¹⁷⁸ <https://www.inmujer.gob.es/observatorios/observimg/home.htm>.

¹⁷⁹ <https://www.inmujer.gob.es/MujerCifras/Home.htm>.

¹⁸⁰ <https://www.inmujer.gob.es/MujerCifras/MujeresHombresEspana/MujeresHombresEspana.htm>.

¹⁸¹ <https://www.ine.es/>.



- The Observatory for Equality of Opportunities between Women and Men,¹⁸² which monitors the situation of Spanish women in various sectors (including in the cultural field), and offers an updated database to monitor evolution in this regard;
- The Observatory of the Image of Women aims to analyse the representation of women in advertising and the media to see which are the most significant roles attributed to them and, if these are sexist, to carry out actions that contribute to overcoming stereotyped images. It is entrusted with the following functions:
 - Collecting citizen complaints and the *ex officio* monitoring of content considered to be sexist;
 - Analysing and classifying the content detected or reported in order to obtain an overview of how the image of women is currently treated in advertising and the media;
 - Taking action against the senders of the discriminatory messages, requesting the modification or withdrawal of the most stereotyped or denigrating campaigns for women, or requiring them to change their approach in their future actions;
 - Disseminating the information obtained in order to continue promoting the social rejection of discriminatory treatment through media communication;
 - Participating in training and awareness-raising activities on the influence of discriminatory treatment in the media and advertising on inequality.

3.1.3.2.2. Disability

According to Article 8(5) of the Audiovisual Act, AVMS providers shall endeavour to offer in their broadcasts a balanced, normalised, respectful and inclusive image of people with disabilities, as an enriching manifestation of human diversity, avoiding the dissemination of stereotyped or biased perceptions or of social prejudices that may persist. Similarly, they will ensure that the appearance of people with disabilities in the programming is proportional to the weight and participation of these people in society as a whole.

3.1.4. Belgium (French-speaking Community)

3.1.4.1. Off-screen requirements in Belgium (FR)

The public service broadcaster RTBF must ensure that there is no discrimination in its human resources management and is implementing a plan for diversity within its staff. The plan is based on the concept of inclusive diversity and also relates to the promotion of equality between women and men within the company, both for recruitment and career management, in particular in order to gradually increase the number of women in positions

¹⁸² <https://www.inmujer.gob.es/observatorios/observIqualdad/home.htm>.

of responsibility and management as well as in high-visibility positions (Article 63 of its management contract).¹⁸³ More specifically, RTBF must:

- (a) implement a plan to promote equality between women and men, including putting in place processes for identifying talent, supporting training and awareness-raising, promoting work-life balance and appointing an equal opportunities officer;
- (b) designate an internal focal point for gender equality and diversity in a comprehensive manner, including in relation to editorial staff and programming;
- (c) adopt the European Broadcasting Union Charter on Equal Opportunities for Women in Broadcasting;
- (d) support within it any initiative aimed at practically strengthening inclusive diversity in its audiovisual media services and encourage its staff to do likewise, in particular by informing them of the tools available to them and of partners with expertise in this area.

The staff diversity and gender equality plan is assessed annually.

Moreover, according to Article 12(4) of its management contract, RTBF must raise the awareness of independent audiovisual producers to the fact that they must be attentive, both in their relationship with RTBF and with their own subcontractors, to the issues of gender equality and inclusion.

3.1.4.2. On-screen requirements in Belgium (FR)

According to Article 9(1) of the Audiovisual Media Services Decree of the French community of Belgium,¹⁸⁴ RTBF and other AVMS subject to this decree may not transmit programmes that are contrary to the law or the general interest; which undermine respect for human dignity or respect for equality between women and men, or which contain incitement to discrimination, hatred or violence, in particular for reasons of race, ethnicity, gender, nationality, religion or philosophical conception, disability, age or sexual orientation; or which tend to deny, minimise, justify, approve or condone the genocide committed by the Nazi regime during the Second World War, or any other form of genocide. Similarly, Article 11 of the Decree dictates that commercial communications cannot undermine respect for human dignity and respect for equality between women and men, or involve or promote discrimination on the grounds of alleged race, ethnic origin, sex, sexual orientation, nationality, disability or age.

Moreover, according to Article 136(1)(14) of the Decree, the Belgian regulator CSA must participate in carrying out a periodic analysis of the balanced representation of women and men, encourage the dissemination of good practices in the fight against sexist stereotypes, and make specific recommendations where appropriate. It must submit a

¹⁸³ Cinquième contrat de gestion de la RTBF, <https://ds1.static.rtb.be/article/pdf/2018-12-12-contrat-gestion-rtbf-2019-2022-version-definitive-1545319225.pdf>.

¹⁸⁴ Décret coordonné de la communauté française sur les services de médias audiovisuels du 26 mars 2009 (consolidated version), http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=f&table_name=loi&cn=2009032632.

follow-up opinion every year on the implementation of measures favouring a balanced representation between women and men, as well as a periodic analysis of the state of this representation in the French-speaking Belgian audiovisual landscape every 2 years (Article 136 (3) of the Decree).

The public service broadcaster RTBF must be active in compliance with the principle of non-discrimination, and more specifically in promoting diversity and equality between women and men and in combatting sexist or homophobic messages and stereotypes; as such, it must be particularly attentive to the representation of the diversity of origins, gender, age and social class in all its programmes in order to ensure better visibility and a better representation of minorities in its content. Likewise, it must be attentive to the balanced representation of women and men in its programmes and correct the underrepresentation of women interviewed in information programmes, in particular as experts, by using the Expertalia database or any other similar database (Article 5(j) of the RTBF contract). RTBF must also address, transversally in all its programming, and more specifically in its information and continuous education programmes, important social issues such as the equality of women and men, the fight against discrimination and sexist stereotypes and prejudices, the fight against homophobia, the inclusion of people with disabilities, equal opportunities, respect for minorities, and the fight against all forms of violence, especially against women, minorities and the most vulnerable people (Article 6(2)(c) of the RTBF contract).

3.2. Public funding criteria

Given their role as providers of public support for the audiovisual and cinematographic industries, film funds can contribute to the promotion of diversity and inclusion through the introduction of relevant funding criteria.

In 2019, the European Audiovisual Observatory prepared a “Mapping of film and audiovisual public funding criteria in the EU”¹⁸⁵ (“EAO Mapping report”) for the European Commission under the Creative Europe Programme. The purpose of this Mapping report was to explore the different criteria that are used by film and audiovisual funds across Europe when they provide economic support to film and audiovisual projects at the different stages of their production process and throughout the different commercial windows in order to allow a better awareness and common understanding of the rationale for public support to European films and audiovisual works in EU member states.

Minorities and gender were among the criteria researched in the EAO Mapping report. The following sections present an updated version of the information provided therein.

¹⁸⁵ “Mapping of film and audiovisual public funding criteria in the EU”, European Audiovisual Observatory, Strasbourg, 2019, <https://rm.coe.int/mapping-of-film-and-audiovisual-public-funding-criteria-in-the-eu/1680947b6c>.

3.2.1. Gender

3.2.1.1. Off-screen requirements for public funding

The EAO Mapping report included a case study devoted to the off-screen gender equality measures implemented by the funds which proposed a chosen typology of these measures and relevant examples for each category. According to the EAO Mapping report, 15 countries¹⁸⁶ out of 28 had implemented measures or taken some sort of action in order to improve off-screen gender equality.¹⁸⁷

3.2.1.1.1. Data collection and monitoring

Many European funds have included gender as one of their statistical indicators. For instance, since the year 2000, the Swedish Film Institute (SFI) has been collecting gender data on various issues, such as the share of funding applications (production and development) with women in key roles; the share of female directors participating in award ceremonies and festivals; the analysis of the budget for projects with women involved in a key role; and the share of films with women in a leading role. In this spirit, 15 EU funding institutions have recently released reports and studies devoted to gender – either as a stand-alone document or as part of their annual statistical report (for example, the Austrian Film Institute (ÖFI),¹⁸⁸ the Danish Film Institute (DFI),¹⁸⁹ the French National Film and Moving Image Centre (CNC),¹⁹⁰ the British Film Institute (BFI)¹⁹¹ and the Swedish Film Institut (SFI)).¹⁹²

In addition, some funds also require that applicants report on gender. For instance, the Broadcasting Authority of Ireland (BAI) requires that applicants for its funding scheme Sound & Vision¹⁹³ report on the gender of the key creative roles (director, producer, scriptwriter, editor, director of photography, etc.) in order to draw down the final tranche of payment.¹⁹⁴ In turn, the presentation of the gender-specific allocation of personnel cost

¹⁸⁶ AT, BE, DE, DK, ES, FI, FR, GB, HR, IE, IT, NL, PT, SE, SI.

¹⁸⁷ It should be noted that the different options/measures are non-exclusive, that is, a fund can use several mechanisms in parallel.

¹⁸⁸ Österreichisches Filminstitut, “Zentrale Ergebnisse - Österreichischer Film Gender Report 2012-2016”, <https://equality.filminstitut.at/de/zentrale-ergebnisse-oesterreichischer-film-gender-report-2012-2016/>.

¹⁸⁹ Det Danske Filminstitut, “Køn i dansk film 2012-2019”, <https://www.dfi.dk/branche-og-stoette/publikationer-og-indsatser/publikationer/koen-i-dansk-film-2012-2019>.

¹⁹⁰ CNC, “Parité : bilan 2020 des engagements du CNC”, https://www.cnc.fr/a-propos-du-cnc/etudes-et-rapports/bilans/parite--bilan-2020-des-engagements--du-cnc_1369035.

¹⁹¹ British Film Institute, “BFI gender pay gap report”, 2017, <https://www.bfi.org.uk/education-research/film-industry-statistics-reports/reports/bfi-gender-pay-gap-report>.

¹⁹² Svenska Filminstitutet, “The Money Issue - Gender Equality Report 2018”,

https://www.filminstitutet.se/globalassets/_dokument/sfi-gender-equality-report-2018---lowres.pdf.

¹⁹³ Sound & Vision 4 is a funding scheme for television and radio programmes, funded through the television licence fee.

¹⁹⁴ Broadcasting Authority of Ireland, “BAI Gender Action Plan 2018”



items in the application is mandatory to receive production support from the ÖFI.¹⁹⁵ Moreover, as of 2019, filmmakers applying to the DFI for production support are required to submit information on the gender distribution of the personnel involved in their projects, both in front of and behind the camera.¹⁹⁶ In future, producers will also have to disclose the salaries of cast and crew by gender as well as the number of words by gender contained in the roles in the final script. Similar reporting obligations are required of the applicant when applying for support from the BFI,¹⁹⁷ Screen Scotland¹⁹⁸ or the SFI.¹⁹⁹

Furthermore, the on-screen representation of women is also measured or assessed by some funds. For instance, the Spanish ICAA established a label for films and audiovisual works – Especially Recommended for the Promotion of Gender Equality²⁰⁰ – to be assessed at the same time as the age rating; it is granted based on a series of criteria, such as non-sexist language; the fight against gender stereotypes and roles; or the portrayal of an egalitarian image of both genders. If granted, the label entitles the film or audiovisual work to use a distinctive pictogram in any advertising or promotional material.

3.2.1.1.2. Gender equality and funding policies

Several EU funds integrate gender equality into their policies and granting criteria. This can be reflected in the broad general objectives pursued by the fund, with a mid-term strategy or policy on gender, or by setting concrete mid- or long-term objectives.

When it comes to general requirements, the Netherlands Film Fund takes into account diversity, gender equality and the representation of the various ethnic backgrounds of the people of the Netherlands during the selection process.²⁰¹ Moreover, one of the objectives of Austrian Filmfonds Wien is “the promotion of groups that have been underrepresented in filmmaking up to now, especially women and people with a migration

https://www.bai.ie/en/media/sites/2/dlm_uploads/2018/04/20180423_BAI_GenderActionPlan_vFinal_AR.pdf.

See also Broadcasting Authority of Ireland, “Review of the BAI’s Gender Action Plan Activities 2018 & 2019 and Proposed Activities for 2020”,

https://www.bai.ie/en/media/sites/2/dlm_uploads/2020/03/20200304_GAP-Review-Report-Proposals_vFinal.pdf.

¹⁹⁵ Article 1.2 of the Funding Guidelines, <https://www.filminstitut.at/en/guidelines/>.

¹⁹⁶ <https://www.dfi.dk/nyheder/nu-indfores-selvangivelse-om-konsfordeling-i-filmproduktioner>.

¹⁹⁷ P. 16 of the BFI Production Funding Guidelines British Film Institute, “Making an application to the BFI Production Fund”, October 2020, <https://www.bfi.org.uk/get-funding-support/create-films-tv-or-new-formats-storytelling/production-fund>.

¹⁹⁸ <https://www.creativescotland.com/resources/our-publications/funding-documents/equalities-monitoring>.

¹⁹⁹ Svenska Filminstitutet, “Generella villkor för stöd till film”, <https://www.filminstitutet.se/globalassets/1.-sok-stod/filminstitutets-stod/generella-villkor/generella-villkor-stod-till-film-for-2017.pdf>.

²⁰⁰ Resolución de 16 de noviembre de 2011, del Instituto de la Cinematografía y de las Artes Audiovisuales, por la que se establecen criterios para el otorgamiento a las películas cinematográficas y otras obras audiovisuales de la categoría “Especialmente recomendada para el fomento de la igualdad de género”, así como pictograma informativo (ICAA’s Resolution of 16th November 2011, establishing the label “Especially Recommended for the Promotion of Gender Equality” for films and audiovisual Works), <https://www.boe.es/buscar/pdf/2011/BOE-A-2011-18717-consolidado.pdf>.

²⁰¹ Algemeen Reglement van de Stichting Nederlands Fonds voor de Film, January 2021, https://www.filmfonds.nl/media/attachment/2021/2/5/algemeen_reglement_1_januari_2021.pdf; For an English version see <https://www.filmfonds.nl/media/inline/id/2225>.



background, who, despite their high professional qualifications, are underrepresented in creative positions.”²⁰²

Some funds have developed a gender policy or strategy which usually includes data gathering; creating specific working groups to develop concrete recommendations and proposals to improve gender equality; raising awareness of gender and diversity issues; organising training activities and targeted promotion, etc. As an example, the DFI’s gender and diversity policy consists mainly in working with the film industry to collect and share information to raise public awareness. In 2016, the DFI set up three action groups to discuss how to achieve greater gender diversity in Danish cinema.²⁰³ On the basis of their recommendations, the fund adopted “Objectives for a better gender balance in Danish film”,²⁰⁴ which rely on three main actions:

- A permanent dialogue with the industry organisations;
- Incorporating and prioritising gender initiatives throughout all DFI departments;
- Monitoring gender data and publishing annual reports.

In 2017, the DFI published an action plan for the work, and a stakeholders dialogue was put in place with representatives from film industry organisations, agencies and TV stations. The forum has thereafter launched various initiatives, such as a survey on the career path of film instructors from education to their premiere; initiatives focusing on the audience’s experience, such as “Manusfestet”; and the latest action is a “self-declaration” for producers seeking funding from the film institute.²⁰⁵

Gender policies or strategies (or more broadly, diversity and equality policies), have also been put in place by the ÖFI,²⁰⁶ Screen Ireland,²⁰⁷ Screen Scotland,²⁰⁸ Film Cymru Wales²⁰⁹ and the SFI²¹⁰, among others.

In addition, some European funds have the concrete long-term objective of distributing their grants more evenly between men and women. The Austrian ÖFI committed itself to “achieving a proportion of women of 50% in terms of the participants in [supported] projects.”²¹¹ The Finnish Film Foundation’s target is to increase the number

²⁰² Article 2 of the General Part of the Funding Guidelines of the Vienna Film Fund, https://www.filmfonds-wien.at/files/ffw_f_rderrichtlinien_teil-a_allgemeiner-teil.pdf.

²⁰³ Reports from Action Group 1, <https://www.dfi.dk/files/docs/2018-02/Aktionsgruppe%201%20-%20rapport%20om%20k%C3%B8nsdiversitet%20i%20dansk%20film.pdf>; Action Group 2, <https://www.dfi.dk/files/docs/2018-02/ANBEFALINGER%20-%20Arbejdsgruppe%20II%20-FINAL%20271016.pdf>; Action Group 3, <https://www.dfi.dk/files/docs/2018-02/Barrieregruppe%20konklusion.pdf>.

²⁰⁴ https://www.dfi.dk/files/docs/2018-02/Maalsætning-for-en-bedre-koensbalance-i-dansk-film_dec_16.pdf

²⁰⁵ <https://www.dfi.dk/branche-og-stoette/publikationer-og-indsatser/konsbalance>.

²⁰⁶ <https://equality.filminstitut.at/de/>.

²⁰⁷ <https://www.screenireland.ie/about/gender>.

²⁰⁸ <https://www.creativescotland.com/what-we-do/the-10-year-plan/connecting-themes/equalities-and-diversity>.

²⁰⁹ <http://ffilmcymruwales.com/index.php/about-us/our-policies>.

²¹⁰ <https://www.filminstitutet.se/en/about-us/swedish-film-institute/gender-equality/>.

²¹¹ Mission Statement of the project commission 2017-2020, <https://equality.filminstitut.at/de/mission-statement>. This objective stems from the principle of Gender budgeting, which has been enshrined in the

of female grant applicants to 50%.²¹² In 2013, the SFI set the goal of achieving equality in film production in Sweden by 2015 in their action plan “Towards Gender Equality in Film Production”,²¹³ and extended this to both off- and on-screen representation in the new 2016-2020 action plan.²¹⁴ With regard to the BFI, the fund intends to achieve a gender-balanced distribution of supported filmmakers in the United Kingdom by 2022;²¹⁵ this is part of a broader inclusion policy also targeting people identifying themselves as underrepresented ethnic groups, LGBTQ+ or deaf and disabled.

3.2.1.1.3. Selection committees

Actions related to selection committees include addressing the gender composition of their members, as well as providing training on gender awareness. For example, the majority of CNC employees are women (61.6%) and the 53 CNC commissions active in December 2019 respect gender parity, with 51% of members being women, compared with 40% in 2013. Moreover, within the framework of the agreements signed with the French regions, the CNC now systematically includes a section devoted to gender equality. Negotiations for the 2020-2022 agreements include parity in the committees that select films supported by the regions, and special attention is paid to the place of women in front of and behind the camera.²¹⁶ Similar parity obligations have been implemented by the ÖFI, whereby the adequate representation of women within the commission must be ensured.²¹⁷ As for Catalonia's ICEC, gender parity should be observed in the composition of the selection commissions.²¹⁸

3.2.1.1.4. Enhanced support

Additional support can be granted when there is a balanced gender participation or when female professionals are involved in key positions. These measures are generally based on a point system which assesses the participation of women as directors, producers and

Austrian Federal Constitution since 2009 (Articles 19 and 51), and which means that existing resources should be used as fairly as possible in order to achieve real equality between women and men in the public budget.

²¹² See the FFF figures on gender for 2019 here: <https://www.ses.fi/wp-content/uploads/2020/11/Elokuvavuosi-Facts-Figures-2019.pdf>.

²¹³ https://www.filminstitutet.se/globalassets/4.-om-oss/svenska-filminstitutet/engelsk-media/eng_towards-gender-equality-in-film-production_may2013.pdf

²¹⁴ https://www.filminstitutet.se/globalassets/_dokument/handlingsplaner/mal-2020-en-jamstalld-filmproduktion-bade-framfor-och-bakom-kameran-2016.pdf,
https://www.filminstitutet.se/globalassets/_dokument/handlingsplaner/actionplan_genderequality_eng_final.pdf.

²¹⁵ <https://www.bfi.org.uk/supporting-uk-film/diversity-inclusion/inclusion-targets>

²¹⁶ See CNC, “Parité : bilan 2020 des engagements du CNC”, *op.cit.*

²¹⁷ Bundesgesetz vom 25. November 1980 über die Förderung des österreichischen Films (Filmförderungsgesetz), § 6 (1),

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10009500>.

²¹⁸ Llei 17/2015, del 21 de juliol, d'igualtat efectiva de dones i homes, Article 12,
https://portaljuridic.gencat.cat/ca/pjur_ocults/pjur_resultats_fitxa/?action=fitxa&documentId=698967.



scriptwriters, or as heads of key departments, among others. The score may affect the eligibility of the application and/or the award.

Table 4. Selected examples of measures enhancing funding when female professionals are involved

CC	Fund	Typology	Description
AT	ÖFI	Bonus	There is a gender incentive if the film reaches a minimum number of female staff – the production company will receive an automatic non-repayable subvention of EUR 30 000. This amount can only be used for the development (script/project development) of new projects with the involvement of at least two female professionals working as the producer, director or scriptwriter. ²¹⁹
	Filmfonds Wien	Assessment criteria & Bonus	In the case of TV production, scripts written by female authors and works directed by women will receive special attention. ²²⁰ In addition, the maximum awardable amount “can only be applied for if at least one of the following positions is held by a woman: producer, scriptwriter, director.” ²²¹
FR	CNC	Bonus	Direct allowances equal to 15% of the sum invested by the production company from its CNC automatic account (reference funding) can be allocated for cinematographic works with a balanced female participation in key positions (assessed based on nine key positions). ²²²
IT	MIBAC	Eligibility criteria	In the case of selective subsidies, the gender of the director is included in the eligibility test. ²²³
PT	Instituto do Cinema e do Audiovisual	Bonus	In the case of pre-production support, the ceiling of financial support can be raised by 10% when women make up more than 50% of the total number of authors of the project. ²²⁴
ES	ICAA	Assessment criteria	In all production schemes, the evaluation process includes the assessment of gender equality (or female participation) in the project. Compliance with this criterion is achieved by having at least 40% of women in management positions in 10 of the most relevant categories in the production of a film. Likewise,

²¹⁹ <https://equality.filminstitut.at/de/gender-incentive-2019/>

²²⁰ Article 4 of the Guidelines, https://www.filmfonds-wien.at/files/ffw_f_rderrichtlinien_teil-d_herstellung-von-fernsehproduktionen.pdf.

²²¹ Article 7 of the Guidelines, *Op. cit.*

²²² Only for the production support of cinematographic feature films, see Articles 211-86-1 to 211-86-5 of the Film and Moving Image Code, *op. cit.*

²²³ Lett. b) paragraph 3, Article 16 of the 2018 Call for selective subsidies, http://www.cinema.beniculturali.it/uploads/DCA/2018/bando-selettivi_2018.pdf.

²²⁴ Article 11 of Annex 2, http://www.ica-ip.pt/fotos/downloads/2_anexo_ii-escrita_e_desenvolvimento_de_obras_cinematograficas_2018_237645b0ebbd2123d7.pdf and Annex 14; http://ica-ip.pt/fotos/downloads/14_anexo_xiv-escrita_e_desenvolvimento_audiovisual_2018_322125b17f7196c2e5.pdf.

CC	Fund	Typology	Description
			it is foreseen that in the case of male co-participation, the score will be proportional to the number of women, as long as it is proven that they have the same level of responsibility, which must be expressly reflected in the credit titles. ²²⁵
	ICEC	Assessment criteria	The promotion of gender equality is an integral part of the evaluation of an application. This is assessed by assigning points to projects based on the number of women in key roles (director, producer, scriptwriter, DOP, editor, composer, head of the sound department or head of special effects). ²²⁶ In the case of pre-production support, the assessment is based on the positions of director, producer and scriptwriter. ²²⁷
	Basque Country	Assessment criteria	The participation of women in management, script and/or executive production, as well as the work's contribution to a balanced and non-stereotyped portrayal of the different genres, is worth a maximum of 5 points out of a total of 100 points. ²²⁸

Source: European Audiovisual Observatory, "Mapping of film and audiovisual public funding criteria in the EU", 2019.

3.2.1.1.5. Schemes exclusively devoted to women

Only Screen Ireland has specific schemes reserved to female applicants. First, the Enhanced Production Funding for Female Talent²²⁹ is open to Irish female talent whose projects qualify for the Fiction Production and Documentary Production schemes. The grant is awarded in addition to the amount available for the above-mentioned schemes and can reach up to EUR 100 000 for fiction if there is a female writer/director attached, and up to EUR 25 000 for documentaries when the project has a female director attached. In addition, the POV: Production and Training Scheme for Female Creative Talent²³⁰ is aimed at female

²²⁵ Orden CUD/769/2018, de 17 de julio, por la que se establecen las bases reguladoras de las ayudas previstas en el Capítulo III de la Ley 55/2007, de 28 de diciembre, del Cine, y se determina la estructura del Registro Administrativo de Empresas Cinematográficas y Audiovisuales (texto consolidado), <https://www.boe.es/buscar/pdf/2018/BOE-A-2018-10176-consolidado.pdf>.

²²⁶ Resolució CLT/1055/2020, de 15 de maig, per la qual es dona publicitat a l'Acord del Consell d'Administració de l'Institut Català de les Empreses Culturals, pel qual s'aproven les bases específiques que han de regir la concessió de subvencions per a la producció de llargmetratges cinematogràfics, Article 7(1)(c), https://dogc.gencat.cat/ca/pdogc_canals_interns/pdogc_resultats_fitxa/?action=fitxa&documentId=873522.

²²⁷ Resolució CLT/1074/2020, de 18 de maig, per la qual es dona publicitat a l'Acord del Consell d'Administració de l'Institut Català de les Empreses Culturals pel qual s'aproven les bases específiques que han de regir la concessió de subvencions per al desenvolupament de projectes audiovisuals, Article 7(1)(c), https://dogc.gencat.cat/ca/pdogc_canals_interns/pdogc_resultats_fitxa/?action=fitxa&documentId=873591.

²²⁸ Article 32 of Order ECD/2796/2015, of 18 December, establishing the bases regulating the aid provided for in Chapter III of Law 55/2007, of 28 December, on Cinema, and determining the structure of the Administrative Register of Cinematographic and Audiovisual Companies, <https://www.boe.es/boe/dias/2015/12/23/pdfs/BOE-A-2015-14059.pdf>.

²²⁹ <https://www.screenireland.ie/gender-and-diversity/ifb-gender-statistics/enhanced-production-funding-for-female-talent-other-funding-schemes>.

²³⁰ https://www.screenireland.ie/images/uploads/general/POV_Guidelines_APPROVED.pdf.

writers and directors, in order to support the development and production of low-budget feature films (with a budget of up to EUR 400 000). In either case, gender balance is expected across the entire crew involved in the production. Six selected teams can be awarded development funding – up to EUR 10 000 per team for the initial development stage – of which only three can obtain production funding, along with further assistance, which includes access to networking events as well as mentoring and high-level training with established industry professionals.

3.2.1.1.6. Training, mentoring and other measures

There are training and mentoring actions and programmes aimed at increasing the chances of female professionals in the film and audiovisual industries. For instance, in 2015, the Austrian fund ÖFI launched the Producers' Programme for Women,²³¹ ("ProPro"), aimed at helping women to further develop their film projects and/or company strategies, leadership skills and career planning. The Belgian fund Screen Brussels is a partner of "BoostCamp", which is intended to accelerate the development of Belgian women's film projects and fiction series.²³² Taking a different approach, the DFI provides training for employees involved in grant decisions in Denmark in order to help them recognise and understand unconscious patterns of behaviour.²³³

As for other actions, the SFI launched the website "Nordic Women In Film" in 2016,²³⁴ intended to disseminate awareness of women's professional contributions to the film industry in Sweden. Moreover, the Finnish Film Foundation (FFF) edited the "Guidelines for the prevention of sexual harassment in the film and television industries" in order to strengthen early and effective action against sexual harassment in these industries.²³⁵

3.2.1.2. On-screen requirements for public funding

According to the EAO Mapping report, several funds have introduced measures directed at improving the on-screen representation of women.

²³¹ <https://equality.filminstitut.at/de/propro/>, see Propro's website: <http://propro.filminstitut.at/>.

²³² <http://leboostcamp.com/>.

²³³ <https://www.dfi.dk/en/english/about-dfi/enhanced-diversity-efforts>.

²³⁴ <http://www.nordicwomeninfilm.com/about/>.

²³⁵ https://www.ses.fi/wp-content/uploads/2020/10/Guidelines_for_the_prevention_of_sexual_harassment_in_the_film_and_tv_industries.pdf.

Table 5. Selected examples of on-screen gender measures by national/federal funds

Country	Fund	Description of the measure
AT	ÖFI	The fund uses the Bechdel test ²³⁶ to analyse the content of submitted scripts. ²³⁷ In addition, the fund runs a scriptwriting competition for female characters beyond clichés entitled “If she can see it, she can be it.” ²³⁸
ES	ICAA	The fund established the label for films and audiovisual works “Especially Recommended for the Promotion of Gender Equality”, ²³⁹ to be assessed at the time of the age rating; it is granted based on a series of criteria such as non-sexist language, the fight against gender stereotypes and roles or the portrayal of an egalitarian image of both genders. If granted, the label entitles the film or audiovisual work to use a distinctive pictogram in any advertising or promotional material.
IE	BAI	As of 2019, the BAI will put particular focus on projects across all genres telling women’s stories. ²⁴⁰
PL	PISF	The Bechdel test makes up part of the required documents to be submitted during the application process; however this does not affect the evaluation of the application and is only used for information purposes.

Source: European Audiovisual Observatory, “Mapping of film and audiovisual public funding criteria in the EU”, 2019.

3.2.2. Linguistic minorities

Requirements related to the language serve to guarantee film and audiovisual production in the main language of the country, but also to promote production in other minority languages. For example, in Sweden, the SFI will assess whether a project in a language other than Swedish, including one of Sweden’s minority languages (Yiddish, Romani Chib, Sami, Finnish and Meänkieli), has the potential to reach a Swedish audience. Indeed, one of the objectives of the SFI, especially when it comes to distribution and promotion support, is to increase accessibility to films in the national minority languages. In other countries, such as Finland or Romania, the fact that the original version is made mainly in a language

²³⁶ The Bechdel test is a method of assessing the representation and portrayal of women on screen based on compliance with three criteria: (1) The film has at least two (named) women in it (2) who talk to each other (3) about something besides a man, see <https://bechdeltest.com>.

See the ÖFI application criteria here:

https://equality.filminstitut.at/de/view/files/download/showDownload/?tool=12&feld=download&sprach_con nect=21&tmp=true.

²³⁷ <https://equality.filminstitut.at/de/was-bisher-geschah>.

²³⁸ <https://equality.filminstitut.at/de/menu257>.

²³⁹ Resolución de 16 de noviembre de 2011, del Instituto de la Cinematografía y de las Artes Audiovisuales, por la que se establecen criterios para el otorgamiento a las películas cinematográficas y otras obras audiovisuales de la categoría “Especialmente recomendada para el fomento de la igualdad de género”, así como pictograma informativo, <https://www.boe.es/buscar/act.php?id=BOE-A-2011-18717>.

²⁴⁰ <https://www.bai.ie/en/bai-focuses-on-womens-stories-under-sound-vision-scheme>.

spoken by an ethnic minority in the country will also be one of the conditions that allow the work to be qualified as a national work.

Moreover, one of the main goals of some regional funds is to promote production in a regional language or dialect. For instance, the following table presents selected examples of requirements related to the use of regional languages.

Table 6. Linguistic criteria in selected funds

Fund	Description
Ffilm Cymru Wales	Although not a mandatory requirement, Ffilm Cymru Wales will encourage Welsh cultural content as well as Welsh language projects.
Northern Ireland Screen	Regarding the shooting language, the Irish Language Broadcast Fund requires at least 75% of the spoken word within the production to be Irish. Furthermore, one of the criteria used to assess the application will be the “contribution to the stability and sustainability of the Irish language independent production sector in Northern Ireland”.
ICEC	The Catalan Cinema Law provides the rights of the citizens of Catalonia “to choose to see the cinematographic work in Catalan or in Castilian and favouring the presence of works in the original subtitled version”.

Source: European Audiovisual Observatory, “Mapping of film and audiovisual public funding criteria in the EU”, 2019.

3.2.3. Ethnic, social and religious diversity

There are no quotas or other binding measures related to diversity (based on ethnic, social or religious origin) in film and audiovisual funds in the EU28 as such.²⁴¹ Nevertheless, these issues are still taken into account by funds in 17 countries.²⁴² The following general non-exclusive typologies can be established regarding ethnic, social and/or religious diversity:

- Diversity forms part of the evaluation criteria in the cultural test (for example, how the project represents the cultural diversity of the country/region of the fund, how it improves the representation of certain minority groups, how it addresses important social themes relevant to the country/region, etc). This sort of criteria is used in the cultural test of 13 countries.²⁴³ For instance, the cultural test of Spain’s ICAA includes the following criteria related to the applicant project: “It provides further knowledge of cultural, social, religious, ethnic, philosophical or anthropological diversity.”²⁴⁴

²⁴¹ The Mapping Report was made before Brexit.

²⁴² BG, CY, CZ, DE, DK, ES, FR, GB, HR, HU, LT, LV, NL, PT, RO, SE, SK.

²⁴³ CY, DE, DK, ES, HR, HU, LT, LV, NL, PT, RO, SK.

²⁴⁴ Article 12 of Order CUD / 769/2018, of July 17.



- Diversity is assessed separately at the time of application or during the evaluation of a project in 6 countries.²⁴⁵ In the United Kingdom, as part of their application, the BFI requires all applicants to complete a BFI Standards form in which they must state their plans for diversity in their projects, responding to the BFI Diversity Standards (detailing how they intend to address industry underrepresentation in relation to disability, gender, race, age, sexual orientation and socio-economic status both on and off screen). In Sweden, the regional fund Film in Skåne considers “efforts to reflect society’s composition regarding gender and cultural diversity” in their decision-making.
- Diversity is one of the general objectives pursued by the film funds in 4 countries.²⁴⁶ In Sweden, one of the objectives arising from the 2013 Film Agreement and imposed on the Swedish Film Institute is that “funding shall be given based on the perspective of diversity.”
- Funding can be received for actions directly related to diversity. For instance, in France, the CNC’s Diversity Image Fund²⁴⁷ is a scheme devoted to cultural diversity and equal opportunities. Support is granted to projects that represent the French immigrant population and their stories as well as to those that address equality between men and women and target disadvantaged populations in France. Moreover, the Swedish Film Institute’s distribution grants are allocated, inter alia, to support the subtitling of “Swedish film in languages spoken by larger groups of newly arrived immigrants.”
- In addition, some funds carry out data collection and monitoring on diversity issues.²⁴⁸ As an example, the DFI has conducted two studies on the matter: “Study of Ethnic diversity in Danish Film” in 2015, and “Social and geographical diversity in the Danish film industry, 2017.”

²⁴⁵ BG, CZ, DK, GB, NL, SE.

²⁴⁶ DK, GB, RO, SE.

²⁴⁷ https://www.cnc.fr/professionnels/aides-et-financements/multi-sectoriel/ecriture-et-developpement/fonds-images-de-la-diversite_191484.

²⁴⁸ DK, GB.

4. Industry best practices

This chapter aims to present initiatives taken by industry stakeholders across Europe and at different places in the audiovisual value chain to promote diversity and the inclusion of underrepresented groups on screen/air and in the workforce. Its purpose is not to present all initiatives in an exhaustive register, but to convey, through concrete examples, a qualitative analysis of the range of actions and tools that may be put in place at industry level to promote diversity and inclusion and ensure that all forms of discrimination based on gender, age, disability, sexual orientation, ethnic or social origin, etc. are properly recognised and addressed.

4.1. Strategies and tools

Experts in the field generally agree that long-term impact and structural changes towards more diversity and inclusion on screen/air and in the workforce depend on the setting up of strategies and policies, supported by appropriate human and financial resources and implemented in a consistent manner.²⁴⁹ Some of these strategies are adopted on a cross-sectoral level by stakeholders at different stages of the audiovisual value chain. Others are adopted for a specific sub-sector (for example, production, distribution, exhibition, broadcasters, VOD, etc.). It is also often stressed that, in order for these strategies to be efficient, they must include targeted objectives to be achieved within a defined timeframe and over a long period of time. But first and foremost, whichever strategy is chosen, all actors generally agree that the first step is to get an accurate picture of the situation, and for that it is necessary to collect data in order to measure the existing degree of diversity and inclusion and the extent to which discrimination is present or not.²⁵⁰ Finally, ensuring a regular monitoring of the data at regular time periods is considered an essential part of any efficient strategy.

4.1.1. Sectoral recommendations

A number of initiatives and recommendations have been adopted in recent years at sectoral level, mainly concerning gender equality, and increasingly towards a broader notion of

²⁴⁹ See, for example, Tepper, D., Good Practices Handbook, UNI-MEI, op. cit.

²⁵⁰ See the summary of the workshop held by the European Audiovisual Observatory on 10 December 2020, “Diversity and inclusion in the European audiovisual industries: both on and off-screen”, <https://rm.coe.int/summary-workshop-2020-diversity/1680a14957>.

diversity and inclusion. Thus, for example, at social partner's organisations level, the EU Social Dialogue Committee in the Audiovisual sector – representing commercial and public broadcasters, producers, and trade unions representing journalists, cast and crew, and other professionals –²⁵¹ has been promoting gender equality in film, radio and television for many years already. In October 2011, the Committee adopted a Framework of Actions (FoA) on Gender Equality,²⁵² which proposes a list of actions and recommendations on gender portrayal, equality of pay and in decision-making, gender roles in the workplace, and the reconciliation of work and private life. Actions proposed under these areas include:

- Raising awareness among employers and workers (through training programmes and communication);
- Adopting quantitative and qualitative positive action plans (gender equality plans, gender sensitive indicators, toolkits, a review of HR policies and procedures, etc.);
- Ensuring regular monitoring and follow-up of actions;
- Mainstreaming gender equality (that is, a strategy for making women's as well as men's concerns and experiences an integral dimension of the design, implementation and monitoring of social and human resources policies and programmes).

The social partners have agreed to promote the FoA among their member organisations and to assess developments and progress in the sector. In 2018, they launched a joint mapping exercise to collect information on the state-of-play and to identify the actions still needed to keep pushing for gender equality and diversity in the European audiovisual sector. The result of this work was published in the form of a Good Practices Handbook,²⁵³ which gives an overview of some available statistics on the presence of women in the European audiovisual sector and highlights initiatives taken by industry stakeholders.

4.1.2. Monitoring and data collection

The data collected may concern on and/or off-screen representation. It may be quantitative and/or qualitative. Quantitative research consists in analysing the representation of persons from underrepresented groups in films and TV programming (news and current affairs, sport, advertising, fiction, entertainment, new types of cross-cutting TV genre emerging with the evolution of genre classification, etc.), and in the workforce. In practice, quantitative data involves monitoring the proportion of the presence and roles/functions of persons from such groups on screen/air and in the payroll. Qualitative research focuses

²⁵¹ The EU Social Dialogue Committee in the Audiovisual sector includes: EURO-MEI - UNI-Europa Media - Entertainment & Arts, the Association of Commercial Television in Europe (ACT), the International Federation of Musicians (FIM), the Association of European Radios (AER), the International Federation of Actors (FIA), the European Coordination of Independent Producers (CEPI), the European Federation of Journalists (EFJ), the European Broadcasting Union (EBU), the International Federation of Film Producers' Associations (FIAPF), <https://ec.europa.eu/social/main.jsp?catId=480&langId=en&intPageId=1825>.

²⁵² Framework of Action on Gender Equality, 27 October 2011, <https://ec.europa.eu/social/main.jsp?catId=521&langId=en&agreementId=5206>.

²⁵³ Tepper, D., Good Practices Handbook, UNI-MEI, March 2020, <https://www.equalitydiversityinavsector.eu/>.

on the portrayal of persons from under-represented groups on screen/air and the extent to which it may convey stereotypes about them. With regard to the workforce, qualitative analysis may measure career management, staff bias, the prevention of policies against harassment, gender-based violence or, on the contrary, the implementation of positive measures for greater diversity and inclusion.

A range of tools have been put in place at industry level to collect data and monitor diversity and inclusion on and off screen, ranging from monitoring activities – including the launching of surveys and the publication of studies – to the setting up of databases and observatories, some examples of which are presented below.

4.1.2.1. Partnering with research and monitoring bodies: examples in France, Italy, Croatia and Sweden

In many European countries, the measurement and analysis of gender representation is carried out by public service broadcasters and/or commercial broadcasters, sometimes in partnership with research centres and monitoring bodies. In Italy and France, for example, public and private broadcasters partner with research/survey centres on qualitative and quantitative aspects to assess the extent to which their own programmes convey typical stereotypes about women.²⁵⁴ Thus, for example, the Italian broadcaster RAI has developed a monitoring method for analysis which focuses on the programming of content on the one hand, and its perception by the public on the other. In Croatia, the Croatian public service broadcaster HRT submits a yearly report to the Gender Equality Ombudsman on the proportion of programmes aimed at ensuring equality and deconstructing stereotypes.²⁵⁵ In Sweden, the public broadcaster SVT conducts an annual measurement and analysis of gender representation in different groups and positions, while developing a tool allowing it to keep track of how women are represented. SVT has also developed a specific digital tool which measures gender representation in sports programmes.²⁵⁶

4.1.2.2. Civil society monitoring activities: examples in Poland and Slovenia

Monitoring activities concerning diversity and inclusion in the media may also be launched by civil society. For example, in Poland, the Gender Equality Observatory (Obserwatorium Równości Płci, GEO)²⁵⁷ is a non-governmental initiative created in 2012 to monitor and promote gender equality issues in the Polish public sphere. Among its activities, the GEO

²⁵⁴ In some countries, these initiatives come as a response to obligations contained in the service contract or licence of the public service broadcaster regarding the monitoring of the representation of women in broadcasting programmes. For more details on public service broadcasters' obligations, please refer to Chapter 3 of this publication.

²⁵⁵ Study on Industry-led Good Practices related to Gender Diversity in the European Audiovisual Sector, ERGA SG4, Chair CSA FWB (Belgium), Drafters AGCOM (Italy), CSA (France), http://erga-online.eu/wp-content/uploads/2020/01/ERGA_2019_SG4_Report.pdf.

²⁵⁶ See ERGA study op. cit.

²⁵⁷ <http://www.rownosplci.pl/site.php?id=2&lang=1&lang=2>.

analyses gender-based discriminations in the media and examines the role of the media regarding the promotion of the equality of expression.

In Slovenia, various institute and web portals analyse media content. For example, Meta's List (*Metina lista*)²⁵⁸ was established in 2012 as a non-governmental organisation (NGO), whose main activities are run online on the web page Metina Lista, in order to promote agents of change in society. Among its activities, Metina Lista publishes a monthly analysis of the quantitative representation of women in the media in Poland.

4.1.2.3. Co-developing databases of female professionals: examples in Belgium and France

Other initiatives are implemented at industry level to develop databases, sometimes jointly with associations and NGOs in the field (feminist/professional associations). For example, in the French-speaking community of Belgium, the Association of Professional Journalists of the Wallonia-Brussels Federation has developed "Expertalia",²⁵⁹ a database of experts (men and women) from diverse backgrounds and ethnic origins. The aim of Expertalia is to ensure greater equality and ethnic diversity in information. On the one hand, the database is intended to provide journalists with an additional tool to facilitate the daily practice of their profession; on the other hand, it is used for the benefit of experts, to give them visibility in the media landscape.²⁶⁰ A similar project has been launched in France, in collaboration with the public service radio and television broadcasters Radio France and France Television, through the setting up of a free database "Expertes"²⁶¹, which lists more than 1 000 female expert profiles from all sectors and from civil society.

4.1.2.4. Building up a cross-industry forum: example in the United Kingdom

In some countries, monitoring and data collection is organised at a cross-sectoral level. In the United Kingdom, for example, the Creative Diversity Network (CDN),²⁶² which brings together member organisations of the UK TV industry, has created Diamond,²⁶³ an industry-wide monitoring system that collects diversity data (from people who are making new UK-originated content across 30 channels) for the five main broadcasters: the BBC, ITV, Channel 4, C5/ViacomCBS and Sky. The purpose of Diamond is to understand who is making and appearing on television programmes, and whether programme makers represent their audience.

In practice, with the support of production companies, Diamond collects, via the online platform Silvermouse, data on gender, gender identity, age, ethnicity, disability, and

²⁵⁸ <https://metinalista.si/>.

²⁵⁹ Expertalia, <https://expertalia.be/>.

²⁶⁰ A similar initiative was developed in France by the public service broadcaster France Television in association with Radio France in order to identify female speakers more easily. The project "Expertes" is a free database listing more than 1000 expert profiles. For more information, please see: <https://expertes.fr/le-projet/>.

²⁶¹ <https://expertes.fr/le-projet/>.

²⁶² For more information on the Creative Diversity Network, see also section 4.2.2 of this publication

²⁶³ <https://creativediversitynetwork.com/diamond/>.

sexual orientation directly from cast and crew working on TV programmes (actual data). It also collects information about how those on-screen representations might be perceived by viewing audiences (perceived data). Regular reports are published by the CDN to present the outputs of this unique online database.

The third edition of the Diamond report (“The Third Cut”)²⁶⁴ was published in February 2020. It reveals that while some progress has been made, there is more work to be done in many areas. While the representation of women and people from a Black, Asian or Minority Ethnic background (referred to as BAME in the United Kingdom) has increased on and off screen, both groups remain absent from many senior creative roles, BAME groups are underrepresented in off-screen roles, and over 50s are largely underrepresented across the industry. The report also reveals that the industry is still struggling with its employment of disabled people.

4.1.3. Diversity charters, labels and certifications

Other approaches to promoting diversity and inclusion in the audiovisual sector include the launching of cross-cutting diversity charters and standards, and labels and certifications to provide guidance for good practices to enterprises.

4.1.3.1. Diversity charters across the European Union

Diversity charters have been emerging across Europe over the last decade, with the aim of encouraging organisations (NGOs, public bodies, private companies etc.) to develop and implement diversity and inclusion policies. Usually created at the initiative of non-profit organisations, trade unions or business representatives, diversity charters are often under the patronage of national authorities (ministries of labour, employment, social affairs, integration, equal opportunities, etc.). By signing a diversity charter, an organisation voluntarily commits to promoting diversity and equal opportunities in the workplace, regardless of, for example, age, disability, gender, race or ethnic origin, religion or sexual orientation. Some diversity charters may also provide the signatories with know-how, tools and networking opportunities to increase the organisations’ ability to manage diversity and inclusion. Diversity charters may also require signatories to make specific commitments, such as introducing a “diversity plan”, or a set of concrete measures to promote diversity within their organisation. They may also be used to offer detailed information and guidance to the signatories on how, to develop and implement diverse and inclusive policies in the workplace.

The first diversity charter was created in France (*Charte de la diversité*) in 2004 with a view to encouraging companies to guarantee respect for diversity among their workforce. It was originally limited to the notion of ethnic, cultural and social origin. Since then, the notion of diversity has broadened, and the charter with it. It consists of six articles and has been signed by almost 3500 employers. The charter secretariat makes only one stipulation

²⁶⁴ <https://creativitydiversitynetwork.com/diamond/diamond-reports/diamond-the-third-cut-report/>.



– that employers complete a questionnaire for a diversity assessment, which provides an annual review of the practices and initiatives undertaken by the signatory organisations. The results are published on an annual basis.²⁶⁵

The French diversity charter was followed in 2005 by the Belgium diversity charter and in 2006 by the German diversity charter, based on a similar approach. In the 2010s, a second wave of diversity charters emerged in Europe, followed by a third one between 2017 and 2019.²⁶⁶

Other types of charters exist at national level, either to address certain under-represented groups (for example, women, LGBT+, or persons with disabilities) or to target certain sectors.

4.1.3.2. Diversity charters in the audiovisual sector: example in France

Some diversity charters address a specific sector. The audiovisual sector, where the issue of representation in the workplace is further exacerbated by the issue of representation on screen/air, is particularly prone to prejudice and stereotyping.

In France, for example, more than 80 companies from the media sector – television, radio and press, as well as production companies, companies from the music industry, professional organisations and festivals –²⁶⁷ have become signatories to a charter launched in March 2019 under the auspices of the French Ministry of Culture: “For Women in the Media” (“Pour les Femmes dans les Médias”, PFDM).²⁶⁸ A range of actions have been launched under the impulsion of the PFDM charter, structured around three main goals: (1) to inform; (2) to act; (3) to commit to fighting harassment and sexism, and more generally to being in favour of gender equality in the media. An association was created under the same name to promote the goals of the PFDM charter.

CANAL+, for example, as a signatory to the PFDM charter, committed itself, among other initiatives, to creating new internal alert procedures against harassment, to training managers in matters relating to sexual harassment, sexism and discriminations against women, and to allocating a budget dedicated to reducing unjustified salary gaps between

²⁶⁵ <https://www.charte-diversite.com/>.

²⁶⁶ For further details on diversity charters across Europe, please consult the EU Platform of Diversity Charters, created in 2010 at the initiative of and with funding from the European Commission to facilitate the exchange and sharing of experience and good practices, https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/tackling-discrimination/diversity-management/diversity-charters-eu-country_en.

²⁶⁷ The first signatories to the charter included France Télévisions, France Médias Monde, Arte, Groupe TF1, Groupe Canal+, TV5 monde, INA, Radio France, Mediawan, Havas Worldwide, Disney, Newen, Europe 1, OCS, NRJ group, Groupe M6, LagardèreNextRadioTV, and SFR.

²⁶⁸ For more information on the charter “Pour les femmes dans les médias” and the full list of signatories, as of January 2020, please see: https://www.culture.gouv.fr/content/download/261797/pdf_file/20200121_MC-CP-Charte%20PFDM.pdf?inLanguage=fre-FR.

The text of the charte « Pour les femmes dans les médias » is available here :

<https://www.culture.gouv.fr/Actualites/Pour-les-femmes-dans-les-medias-les-premiers-signataires-de-la-charte-temoignent>.

women and men.²⁶⁹ CANAL+ is also signatory to other charters promoting greater inclusion of certain groups, such as the LGBT+ charter “The other circle” (“l’Autre cercle”)²⁷⁰ towards a better inclusion of LGBT+ people in organisations,²⁷¹ or the charter on the representation of persons with disabilities in the media (*Charte relative à la représentation des personnes handicapées et du handicap dans les médias audiovisuels*).²⁷² The latter was launched by the French media regulator (*Conseil supérieur de l’audiovisuel*, CSA) with the aim of improving both the accessibility of programmes to persons with disabilities, and the representation of disability on air, as well as increasing the access of persons with disabilities to the audiovisual workforce. In addition to adhering to these cross-cutting charters, CANAL+ has also launched its own charter to engage productions of original creations in not only achieving professional equality between women and men, but also in representing diversity without stereotypes. The initiatives engaged under these charters come as a complement to the global strategies put in place at corporate level. In the case of CANAL+, several programmes were created to boost gender parity (for example *Boost’Her* for talents), and diversity strategies for better representation are being implemented (for example, in respect of disability, LGBT+, age, and social/cultural/geographic and/or ethnic origins). Each pillar is implemented through concrete actions: internal processes against discriminations; raising awareness among managers; increasing the visibility of minorities/diversities; and having positive impacts on the ecosystem (for instance, through the content produced).

4.1.3.3. Labels, standards and certifications

Another approach to promoting diversity and inclusion in the audiovisual sector consists in launching standards, certifications and labels to provide companies with guidance on good practices for valuing their employees through diversity and inclusion. Among the benefits put forward by companies, this approach makes it possible to give a good corporate image to the company, to animate and share good practices internally and to associate employees around a common project. It also ensures the sustainability of the action in favour of best practice by proposing quantified objectives and concrete tools. Lastly, labels are considered by companies as useful tools to attract and retain talent, to promote the dissemination of a European and international culture of gender equality and diversity among subsidiaries, and to exchange good practices at international level.

Thus, for example, the Gender Equality European & International Standards (GEEIS) and GEEIS-DIVERSITY labels were launched respectively in 2010 and 2017 by Arborus, an international network and endowment fund devoted to gender equality and diversity in the

²⁶⁹ See also the Initiative #StOpE, initiated by Accor and L’Oréal, with more than 50 enterprises and schools to promote good practices against sexism in enterprises. <https://www.charte-diversite.com/linitiative-stope-contre-le-sexisme-ordinaire-en-entreprise/>.

²⁷⁰ See la Charte d’Engagement LGBTQ+ de l’Autre Cercle at : <https://www.autrecercle.org/>.

²⁷¹ In November 2019, CANAL+ also launched a new digital channel, “Hello Canal+”, exclusively dedicated to LGBT+ works and creation, <https://www.canalplus.com/articles/series/hello-canal-focus-sur-les-series-lgbtq-de-la-nouvelle-chaine-digitale>.

²⁷² Charte relative à la représentation des personnes handicapées et du handicap dans les médias audiovisuels, 3 December 2019, Conseil Supérieur de l’Audiovisuel, <https://www.csa.fr/Informer/Toutes-les-actualites/Actualites/Charte-relative-a-la-representation-des-personnes-handicapees-et-du-handicap-dans-les-medias-audiovisuels>.

workplace.²⁷³ The GEEIS and GEEIS DIVERSITY labels are international standards enabling the development of a common culture in gender equality and diversity in the workplace, offering multinational companies international recognition, encouraging the introduction of tools to manage an inclusive equal opportunity strategy and fostering dialogue and the sharing of best practices between countries. Certifications are issued after an on-site audit and are valid for four years, with a follow-up audit after two years.²⁷⁴

4.1.4. Action plans, strategies and guidelines

Many audiovisual stakeholders have adopted action plans, global strategies, guidelines and codes of conduct with a view to improving diversity and inclusion on and off screen/air. They may be designed and implemented at corporate level or as part of an interprofessional initiative involving stakeholders at different levels of the creative value chain.

4.1.4.1. Sectoral strategies towards diversity and inclusion

4.1.4.1.1. Examples of strategies in the exhibition sector

In the cinema exhibition sector, for example, the International Union of Cinema (UNIC), an international trade association representing cinema operators and their national associations in Europe, launched a pan-European mentoring scheme in 2017 called the “UNIC Women’s Cinema Leadership programme”, which aims at supporting more women coming into the industry by creating a strong network of professionals.²⁷⁵ The programme is rooted in the belief that gender-balanced leadership in cinema exhibition is imperative for business success, better governance and more equity in the industry.

At national level, some innovative initiatives have also been taken in the exhibition sector in order to facilitate access to cinema for all. Thus, for example, “Inclusive Cinema” is a UK-wide project from the BFI Film Audience Network (BFI FAN) to support exhibitors in welcoming everyone to participate in cinema by countering cultural, systemic or physical barriers. Supported by National Lottery funding, BFI FAN is a unique collaboration of eight film hubs²⁷⁶ managed by leading film organisations and venues around the United Kingdom.²⁷⁷ Inclusive Cinema, in partnership with the UK network of exhibitors, has developed an approach aimed at identifying isolated groups and existing barriers to cinema

²⁷³ <https://arborus.org/en/label/>.

²⁷⁴The certification body, AFNOR Certification, measures the level of resources implemented in the company and ensures the proper deployment of the HR policy in terms of professional equality at the parent company and in the group’s subsidiaries concerned. A series of criteria are used to assess the involvement and the progress made. For more details on the certification procedure, please see: <https://certification.afnor.org>.

²⁷⁵ <https://www.unic-cinemas.org/industry/mentoring-scheme/?L=0>

²⁷⁶ Film hubs are regional and national centres of expertise and support that connect cinemas, festivals and creative practitioners so that people can access a broader range of cinema across the United Kingdom.

²⁷⁷ It has over 1200 members, including cinemas, festivals, multi-arts venues, community cinemas, film archives, and is at the heart of the BFI’s strategy to build larger and more diverse audiences for UK and international film.

attendance, with the objective of enhancing dialogue between different audiences, raising awareness, collecting data, funding, etc. The ultimate goal of this initiative is to build successful and accessible screening models across the United Kingdom, encouraging sustainable, long-term delivery.

Some exhibitors' initiatives also specifically target the inclusion of persons with disabilities. Thus, for example, the British Independent Cinema Office (ICO) has recommended a set of actions in order to include deaf audiences in cinemas. These include the creation of a video guide to British Sign Language that demonstrates the key signs for cinema; a best practice guide with practical case studies for cinemas keen to build their engagement with deaf audiences; a series of research reports on deaf people's experiences in the cinema; and cinemas' experience with helping deaf persons.²⁷⁸

4.1.4.1.2. Examples of strategies in public service media

Public service media (PSM) have been very active in relation to achieving greater diversity and inclusion in the media across the European Union. Already back in 1995, the European Broadcasting Union (EBU) signed a Charter on Equal Opportunities for Woman in Broadcasting with the European Commission. More recent data from the EBU show that PSM have different starting points and are facing different challenges. However, an increasing number of them are making gender equality a priority and achieving notable results, which is leading to a change in their culture.

At sectoral level, the EBU has created a Gender Equality Steering Group in order to identify and exchange best practices amongst PSM and find "common denominators." According to an EBU report presented by this group in December 2019 entitled "All things being equal: Gender equality guidelines from public service media",²⁷⁹ working towards a sustainable culture in which women and men have equal opportunities to progress is a key element for success in this regard. The Gender Equality Steering Group discovered that the most progressive organisations on gender equality are those that have drafted a strategy and outlined policies that define equality. Equal opportunities for men and women should be noted as the desirable outcome. A strategy will address existing areas of discrimination and a policy will enable action to deliver equality. In addition, a formal policy on gender equality will highlight an organisation's attitude and values regarding equality and gender diversity in the workplace. It will outline the process for eradicating prejudice and inequality and state how the workplace should improve in terms of fair treatment. Furthermore, the notion of "organisational culture" appears as the underlying denominator for success.

At national level, some PSM have set up comprehensive strategies towards more diversity and inclusion both on and off screen. For example, the BBC in the United Kingdom has undertaken, in light of the exceptional events of the year 2020, with the pandemic and

²⁷⁸ For more information on "Developing Deaf audiences for film", please see:

<https://www.independentcinemaoffice.org.uk/advice-support/developing-deaf-audiences-for-film/>.

²⁷⁹ Vaccarone C., 'All things being equal' report – 2019 EBU publication, Gender equality guidelines from public service media, https://www.ebu.ch/publications/position-paper/login_only/guide/all-things-being-equal---gender-equality-guidelines-from-public-service-media.



the killing of George Floyd, to ensure that its content reflects the diversity of its audience, both on and off the air, using not only visual representation on screen, but also subject matter, storytelling, presenters, and contributors to prove that its output reflects everyone. In this line, the BBC has set up the “50:50 The Equality Project”,²⁸⁰ which looks at gender equality by relying on data collection to effect change, measure those who are contributing to the BBC’s stories, and ensure that those stories are authentic, while never compromising on quality. Within the BBC, more than 600 outlets are now involved in the 50:50 project, ensuring that their content reflects the women’s perspective. As a result, 39% of those who are engaging with the BBC have noticed a shift towards more female representation. The BBC has now expanded the 50:50 project to work with 75 partners in 22 countries.

Overall, the focus on creative diversity at the BBC is to create change through concrete actions and different initiatives aimed at bringing about better representation and inclusion. These initiatives include, *inter alia*:

- Equality in Audio pact: an industry-wide initiative to ensure better representation in the audio sector, which BBC Radio & Music has signed up to;²⁸¹
- BBC Sounds Lab: a new initiative by BBC Radio & Music giving budding audio creators the support they need to turn a great idea of theirs into a podcast outside of the existing commissioning structure;
- The creative Ally Track:²⁸² a tool designed by the BBC Academy and the USC Institution to help people to be better advocates and allies. The tool takes the form of a privilege game in an online test, giving people the opportunity to look at some of the advantages and disadvantages that people may face within their organisations, and giving advice on what steps to take to balance things out to create greater inclusion;
- Pan-BBC language guidance for all content sharers: a living document that will serve to support the consistent use and style of language across the organisation.

4.1.4.1.3. Examples of strategies in commercial broadcasting services

At corporate level, for example, in July 2020, the UK commercial broadcaster network ITV presented a new plan to accelerate change in diversity and inclusion on screen and across ITV by creating more opportunities for those from BAME and other underrepresented groups (including people with disabilities). Over the following 12 months, ITV announced that it would increase investment in this area with a view to delivering measurable change across all levels and sections of ITV.

Five key areas were identified, each of them detailing a list of actions and commitments to be delivered by July 2021. These range from increasing diversity on ITV’s management board with the creation of a new role of Group Diversity and Inclusion Director; to commissioning to ensure ITV better represents contemporary British life on screen, by increasing the diversity of presenters in ITV programmes and lead actors in ITV

²⁸⁰ <https://www.bbc.co.uk/5050>.

²⁸¹ <https://www.bbc.co.uk/blogs/aboutthebbc/entries/9b801ac9-2289-433c-9fcd-258bfca91927>.

²⁸² <https://www.bbc.co.uk/creativdiversity/allyshipapp/#/>.

dramas; improving diversity and career progression in TV production through concrete measurable initiatives;²⁸³ taking positive action in recruitment to support under-represented candidates;²⁸⁴ educating staff and on-screen presenters and commentators about racism;²⁸⁵ and launching programmes to enable minority ethnic talent progression (for example “Race Forward”). ITV has announced that it would report on progress made on each of these commitments every year. ITV is also establishing a Cultural Advisory Council – a group of independent external advisers who will advise, challenge and counsel ITV on all of its inclusion and diversity activities.

4.1.4.1.4. Examples of strategies in VOD services

Considering the increase in time spent on subscription video-on-demand (SVOD) services and the significant role these services are playing in the EU audiovisual industry, it is important to better understand their impact on progression for underrepresented talent in the industry.

For instance, in 2018, Netflix, as a global company, created a Diversity and Inclusion department²⁸⁶ which aims to ensure inclusiveness and diversity in all aspects of its operations. In addition, the company publishes data on its global workforce with regard to gender, and on its US workforce with regard to race/ethnicity.²⁸⁷ In January 2021, Netflix released its first-ever inclusion report,²⁸⁸ highlighting the progress the company has made – notably in terms of increasing the representation of women and people from underrepresented racial and/or ethnic backgrounds in the US workforce and in leadership positions – and the further steps it needs to take to be more inclusive, such as achieving pay equity for underrepresented employees.

On the creative side, Netflix has contributed to the Ofcom Diversity Report and has published guidelines – “Netflix Diversity & Inclusion Best Practice Guidelines for UK Original Scripted Series”²⁸⁹ – which recommend achieving the following targets at relevant points in the production process:

²⁸³ ITV’s “Step Up 60” initiative will provide at least 60 people with the chance to step up and secure their first ITV senior editorial and production roles, including directing, writing or producing episodes of ITV’s new and returning drama, factual and entertainment shows.

²⁸⁴ For example, by advertising externally across a wide range of portals to ensure diverse pools of candidates, and by using a variety of candidate selection and assessment tools to reduce unconscious bias.

²⁸⁵ For example, mandatory race and inclusion training for all staff and on-screen presenters and commentators and inclusive leadership training for all managers.

²⁸⁶ <https://jobs.netflix.com/inclusion>.

²⁸⁷ <https://jobs.netflix.com/inclusion>.

²⁸⁸ <https://about.netflix.com/en/news/netflix-inclusion-report-2021>.

²⁸⁹ The Netflix guidelines can be consulted in the Ofcom report, “Diversity and equal opportunities in television and radio 2019/2020, Report on the UK-based broadcasting industry” https://www.ofcom.org.uk/_data/assets/pdf_file/0022/207229/2019-20-report-diversity-equal-opportunities-tv-and-radio.pdf.

Table 7. Netflix's guidelines on diversity and inclusion

Groups	Guidelines
BAME	<ul style="list-style-type: none"> - At least 20% of speaking roles unless factual/historical accuracy dictates otherwise - At least one BAME writer in every writers' room - At least one BAME Head of Department, Producer or Director on every show
Gender	<ul style="list-style-type: none"> - Aim for gender balance in the writers' room on all shows - On shows with more than one Director, at least one female Director - Aim for gender balance in Heads of Departments on all shows
Disability	<ul style="list-style-type: none"> - One speaking role for an actor with a registered disability unless factual/historical accuracy dictates otherwise - Disabled actors should be cast in disabled roles unless storyline/factual/historical accuracy dictates otherwise - We require a writer and/or consultant with a comparable disability for disabled characters that will feature heavily within a series and/or for series with themes of disability - Work with and support actors and crew members regarding any reasonable adjustments required to enable the individual(s) to work on the production
Socio-Economic Diversity	<ul style="list-style-type: none"> - Commitment to ensure all interns and work experience staff on Netflix productions are paid no less than the UK Living Wage (or London Living Wage, depending on location) - Travel/expenses paid for cast based outside London on call-backs
LGBTQ+	<ul style="list-style-type: none"> - Commitment to ensure representation within the writers' room and in paid production roles on set. While it is illegal to directly inquire about a person's sexual preference/sexuality, there should be opportunities to brief agents, etc. when possible. - We require a LGBTQ+ writer and/or consultant for LGBTQ+ characters that will feature heavily within a series and/or for series with LGBTQ+ themes. - Transgender actors should be cast in transgender roles - At least 8% of characters with speaking roles represented as LGBTQ+ unless factual/historical accuracy dictates otherwise
General	<ul style="list-style-type: none"> - All Netflix teams to take part in Respect@Netflix awareness training to promote an inclusive work environment for everyone

Some innovative initiatives are also implemented by the company at national level, such as in Spain, for example, where Netflix has launched mentoring programmes, whereby young female directors shadow an experienced director during a full season of a series and are given the opportunity to direct an episode. Netflix has also joined with national partners in Spain to carry out some initiatives towards diversity and inclusion with national bodies. For example, along with the Association of Women Filmmakers and Women in

Audiovisual Media (CIMA), and in collaboration with the Institute of Cinematography and Audiovisual Arts (ICAA) of the Ministry of Culture and Sport, it launched the first edition of the CIMA IMPULSA programme, an initiative aimed at promoting women's access to the audiovisual industry through consultancy and training programmes for women in the audiovisual industry.²⁹⁰

4.1.4.2. Codes of conduct and self-regulation tools

Codes of conduct and self-regulation tools are also used to promote diversity and inclusion in the audiovisual sector. Thus, for example, in the Netherlands, a code of conduct – the Diversity & Inclusion Code (*Code Diversiteit & Inclusie*)²⁹¹ – was adopted for and by the Dutch cultural and creative sector committed to diversity and inclusion. The code is an instrument of self-regulation that serves to ensure that the Dutch cultural and creative sector represents the broad diversity of Dutch society. A basic requirement is that the sector is equally accessible to everyone: from creators and producers to workers and audience members.

The code is aimed at those working in the cultural and creative sector, for all organisations involved in the sector, for everyone who supports the sector, and for all consumers of art, culture, and creative products and services. It consists of five principles for effectively shaping and promoting diversity and inclusion in organisations and at work, along an “Implement and Explain” approach, as explained in the figure below:

Figure 1. The ‘Implement and Explain’ approach of the Dutch Diversity & Inclusion Code



Source: *Code Diversiteit & Inclusie*

Under the “Implement and Explain” approach, organisations adhering to the code are accountable for the implementation of the code. In practice, this means that it is up to each of them to explain how they are going about implementing the principles laid out in the code in their annual reports and in other publicly accessible communication, explaining which steps they have taken and which remain to be taken. Public bodies looking to use the code when awarding grants will monitor compliance with the “Implement and Explain” principle.

²⁹⁰ For more details, please see: <https://www.europapress.es/cultura/cine-00128/noticia-cima-icaa-netflix-impulsan-carrera-mujeres-audiovisual-programa-asesoramiento-formacion-20200520132947.html>.

²⁹¹ <https://codedi.nl/wp-content/uploads/2020/09/Diversity-and-Inclusion-Code-English-version.pdf>.

4.1.4.3. Gender incentive tools and discounts

At cross-industry level, some pragmatic solutions have been conceived to improve gender equality in the film production sector. Thus for example, the association Women in Film and Television International (WIFTI)²⁹² has teamed up with the global post-production company Chimney to make a “gender incentive” for change – 10% for 50/50²⁹³ – where production companies get a 10% discount if the production is gender-balanced. In practice, a campaign was launched, the #5050TOGETHER, whereby any service provider for the film and TV industry that joins the campaign commits to giving a 10% discount for production that fulfils the criteria – and any film production that fulfils the criteria can apply for the rebate at the companies listed as partners.

The initiative is based on a point system (based on the Re-Frame programme),²⁹⁴ where a production company needs to get at least four points within eight categories: female lead, female co-lead, female director, female writer, female producer, female representation on screen, 50% female crew, female heads of departments. One point is granted if anyone in those categories is a woman, or two points if that woman is also a person of colour and/or identifies as LGBT+.

4.2. Awareness-raising initiatives

Raising awareness on structural discriminations and stereotypes and committing the media and civil society to greater diversity and inclusion is a second element which is essential to accompany any sector strategy. Raising awareness may be achieved through the publication of manuals, “toolboxes” and educational resources available for media professionals to help them “deconstruct” stereotyped gender representation. This may include, for example, workshops, training, seminars by scholars specialised in media and gender studies, the writing of “gender-neutral” characters to escape unconscious bias, etc. Different types of actions have been implemented by the industry across Europe in order to change mentalities and raise awareness through partnerships, campaigns, coalitions, the co-production of documentary films, etc.

²⁹² <https://www.wifti.net/>.

²⁹³ #5050TOGETHER, <https://10percentfor5050.com/>.

²⁹⁴ Founded and led by Women In Film, Los Angeles and Sundance Institute, ReFrame is an initiative that employs a unique strategy, a peer-to-peer approach, in which ReFrame Ambassadors engage with senior industry decision-makers at over 50 Partner Companies to implement ReFrame programmes. The initiative’s goals are to provide research, support, and a practical framework that can be used by partner companies to mitigate bias during the creative decision-making and hiring process, celebrate successes, and measure progress toward a more gender-representative industry on all levels. For more information, please see: <https://www.reframeproject.org/>.

4.2.1. Launching campaigns and events

In Spain, for example, the Festival *Ellas Crean* (They (female) Create)²⁹⁵ is a cultural festival that was created on 8 March 2004 – International Women’s Day – with a view to increasing the visibility of the works of female artists and artistic creators, and to redressing persistent inequality in the cultural sector. The festival, organised by the above-mentioned Institute for Women and Equal Opportunities, invites different public and private institutions from the cultural sector each year in order to offer a new programme in the fields of theatre, dance, music, visual arts, museums and debates.

Mujeres de Cine (Women in Cinema)²⁹⁶ is another initiative in the same vein; it was born in 2010 with the aim of dynamising and making known Spanish films made by women. Its commitment to promoting and making visible the work of female directors has led to it becoming a reference point for Spanish cinema made by women, both within and outside national borders. Coinciding with its 10th anniversary, *Mujeres de Cine* launched www.vod.mujeresdecine.com, the first VOD platform exclusively dedicated to films made by women that provides access to female film directors and their work from anywhere in the world.

4.2.2. Creating networks and alliances

In some countries, the audiovisual sector has joined forces to put in place cross-industry approaches with a view to increasing the degree of diversity and inclusion on and off screen/air. The resulting initiatives involve a range of different actors from all levels of the creative value chain, including broadcasters, films agencies, audiovisual regulators, civil society and industry representatives, at both national and pan-European level.

At national level, for example, in the United Kingdom, the Creative Diversity Network (CDN)²⁹⁷ involves producers and broadcasters across the UK television industry (such as BAFTA, the BBC, Channel 4, Creative Skillset, PACT, ITN, ITV, Media Trust, S4C, Sky and Turner Broadcasting), with a view to promoting and sharing best practices around diversity among the media industry. The CDN shares best practices among its members (events, initiatives, etc.), as well as information on how to become more diverse and inclusive in making individual productions. It launches new projects, such as the “Doubling Disability” project,²⁹⁸ or the granting of “CDN Awards” to reward diversity in television (both on and offscreen).²⁹⁹

²⁹⁵ <https://ellascrean.com/presentacion/>.

²⁹⁶ <https://www.mujeresdecine.com/>.

²⁹⁷ Creative Diversity Network, <https://creativediversitynetwork.com/>.

²⁹⁸ The “Doubling Disability” project aims to double the percentage of disabled people working in UK broadcasting by the end of 2021.

²⁹⁹ The “CDN Awards” are granted every two years to reward outstanding quality, creativity and diversity in television that represents all aspects of British society. (both on and offscreen).

At pan-European level, for example, the “New Neighbours” project,³⁰⁰ funded by the European Commission and managed by the European Broadcasting Union (EBU), involves public service media, community media, and civil society organisations.³⁰¹ New Neighbours, which was launched in January 2019, and running until December 2020, aims to highlight the positive social and economic contributions made by migrants and refugees throughout communities across Europe. By promoting direct participation in media production and intercultural dynamics, its goal is to foster tolerance and acceptance for migrants and refugees and to challenge stereotypes in order to help promote the integration of migrants into local communities. New Neighbours raises awareness through the use of documentaries produced by public service media, social media-based campaigns and community media productions. Nine public service media providers from all over Europe³⁰² have joined the project and committed to each produce a documentary about the challenging process of integration and acceptance.

On the cinema side, as a response to the massive antiracism protests, a group of approximately 20 heads of European film institutions, associations, funds and industry platforms³⁰³ have created a taskforce – Antiracism Taskforce European Film (ARTEF) – to tackle institutional racism in the European film industry. ARTEF has been gathering virtually on a bi-monthly basis to raise awareness by offering education and insights, and by suggesting revisions to regulations and practices, as well as means to combat adversity and weather opposition from the industry.

4.2.3. The role of NGOs

A variety of smaller-scale actions, also undertaken at industry level, can have a great impact on gender equality and diversity. With respect to gender equality, these include, for example, childcare services at festivals; support for parents/carers in the workplace and in work processes; gender equality objectives and actions in film schools; and databases of women professionals.

Many NGOs are also very active in the field and play an important role in raising awareness among the audiovisual industry and in civil society. They do so by organising seminars, conferences and events at festivals and other important venues in the sector.³⁰⁴ They have also been at the initiative of the development of useful tools, in the form of a rating system to highlight diversity. Thus, for example, the F-rating,³⁰⁵ created by Holly Tarquini, is a rating system used to highlight women on screen and behind the camera.

³⁰⁰ <https://www.ebu.ch/projects/tv/documentary/new-neighbours>.

³⁰¹ The Community Media Forum Europe (CMFE), the Media Diversity Institute (MDI), the Cooperation for the development of emerging countries (COSPE) and the Community Media Institute for training, research and consulting (COMMIT).

³⁰² Belgium, Croatia, Czech Republic, Germany, Italy, Portugal, The Netherlands, Slovenia, Spain.

³⁰³ For the full list of members, please see: <https://www.artef.org/>.

³⁰⁴ To cite but a few of them: the European Women’s Audiovisual network (EWA), <https://www.ewawomen.com/women-in-the-film-industry/>; the Collectif 5050, <http://collectif5050.com/fr/>; the Media Diversity Institute, <https://www.media-diversity.org/about/>, etc.

³⁰⁵ <http://f-rated.org/about/>.



Developed at the Bath Film Festival in 2014, the F-rating was inspired by the Bechdel Test, and was added to IMDb as a keyword in 2017. In Sweden, A-rate is a campaign that aims to raise awareness about representation in cinema by giving films that pass either the Bechdel test (for gender) or the Chavez Perez test (for diversity)³⁰⁶ an A grade.³⁰⁷ The Annenberg Inclusion Initiative³⁰⁸ is the leading think tank in the world studying diversity and inclusion in entertainment through original research and sponsored projects. Their research includes, *inter alia*:

- The assessment of the gender and race/ethnicity of directors across 1,300 popular films from 2007 to 2019³⁰⁹;;
- An analysis of every speaking or named character for gender, race/ethnicity, LGBT+ status, and disability across the 1,300 top films from 2007 to 2019³¹⁰;;
- Inclusion in the recording studio³¹¹;
- The portrayal of mental health conditions in storytelling³¹².

It is also at the origin of the launching of the Inclusion Rider, which is an addendum to an actor/content creator's contract that stipulates that stories and storytellers should look like the world we actually live in – not a small fraction of the talent pool. The purpose of the inclusion rider is to counter bias in interviewing/auditioning and hiring/casting in specific employment positions in the entertainment industry.

³⁰⁶ For a film to pass the Chavez Perez Test, it must have two non-white people speaking to each other about something other than a crime.

³⁰⁷ <http://www.a-listfilm.com/>.

³⁰⁸ <https://annenberg.usc.edu/research/aii>.

³⁰⁹ „Inequality in 1,300 popular films: Examining Portrayals of Gender, Race/Ethnicity, LGBTQ & Disability from 2007 to 2019” September 2020, http://assets.uscannenberg.org/docs/aii-inequality_1300_popular_films_09-08-2020.pdf.

³¹⁰ Inclusion in the Director's Chair: Analysis of Director Gender & Race/Ethnicity Across 1,300 Top Films from 2007 to 2019, <http://assets.uscannenberg.org/docs/aii-inclusion-directors-chair-20200102.pdf>.

³¹¹ „Inclusion in the Recording Studio? Gender and Race/Ethnicity of Artists, Songwriters & Producers across 800 popular Songs from 2012-2019, January 2020, <http://assets.uscannenberg.org/docs/aii-inclusion-recording-studio-20200117.pdf>.

³¹² Mental Health Conditions in Film & TV: Portrayals that dehumanize and trivialize characters, http://assets.uscannenberg.org/docs/aii-study-mental-health-media_052019.pdf.



5. Case law

The jurisprudence of both the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU) regarding the principle of non-discrimination is a vast field with a great amount of judgments. Making a coherent summary of the legal teachings from these two European courts of law would probably go beyond the scope of this publication. Therefore, the following pages will simply provide a non-comprehensive selection of court cases that appear to be paramount for the comprehension of the subject at hand. After a brief introduction to the jurisprudence of the ECtHR, with special emphasis on cases concerning incitement to hatred and discrimination, the second part of the chapter focuses on the case law of the CJEU, and discusses judgments that have clarified some of their most important legal concepts.³¹³

5.1. European Court of Human Rights

5.1.1. General principles

In *Kiyutin v Russia*,³¹⁴ the ECtHR explained that “discrimination means treating differently, without an objective and reasonable justification, persons in analogous, or relevantly similar, situations.” In *Thlimmenos v Greece*,³¹⁵ the ECtHR considered that the prohibition of

³¹³ For a more in-depth discussion of the ECtHR and the CJEU case law, see European Court of Human Rights, “Guide on Article 14 of the Convention (prohibition of discrimination) and on Article 1 of Protocol No. 12 (general prohibition of discrimination)”,

https://www.echr.coe.int/Documents/Guide_Art_14_Art_1_Protocol_12_ENG.pdf; Equinet, European Network of Equality Bodies, “Compendium: Article 14 Cases from the European Court of Human Rights”, <https://equineteurope.org/2020/equinet-compendium-article-14-cases-from-the-european-court-of-human-rights/>; European Union Agency for Fundamental Rights and Council of Europe, Handbook on European non-discrimination law (2018 edition),

https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-handbook-non-discrimination-law-2018_en.pdf;

Liu K., O’Cinneide C., “The ongoing evolution of the case-law of the Court of Justice of the European Union on Directives 2000/43/EC and 2000/78/EC”, November 2019,

<https://www.equalitylaw.eu/downloads/5009-the-ongoing-evolution-of-the-case-law-of-the-court-of-justice-of-the-european-union-on-directives-2000-43-ec-and-2000-78-ec-pdf-766-kb>.

³¹⁴ Judgment of the ECtHR (First Section), Case of *Kiyutin v Russia* (Application no. 2700/10), 10 March 2011, <http://hudoc.echr.coe.int/eng?i=001-103904>. The judgment quotes *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, § 175, ECHR 2007-IV, and *Burden v. the United Kingdom* [GC], no. 13378/05, § 60, ECHR 2008.

³¹⁵ Judgment of the ECtHR (Grand Chamber), Case of *Thlimmenos v Greece* (Application no. 34369/97), 6 April 2000, <http://hudoc.echr.coe.int/eng?i=001-58561>.

discrimination under Article 14 ECHR³¹⁶ is violated “when States treat differently persons in analogous situations without providing an objective and reasonable justification” but also “when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different.”

With regard to indirect discrimination, the ECtHR held in *J.D. and A v. the United Kingdom*³¹⁷ that “a policy or measure that has disproportionately prejudicial effects on a particular group may be considered discriminatory, regardless of whether the policy or measure is specifically aimed at that group.” Indirect discrimination “may arise under circumstances where a policy or measure produces a particularly prejudicial impact on certain persons as a result of a protected ground, such as gender or disability, attaching to their situation. In line with the general principles relating to the prohibition of discrimination, this is only the case, however, if such policy or measure has no “objective and reasonable” justification.” The ECtHR also explained that “Article 14 does not preclude States from treating groups differently even on otherwise prohibited grounds in order to correct “factual inequalities” between them. Moreover, in certain circumstances a failure to attempt to correct inequality through different treatment may in itself give rise to a breach of the Article.”

5.1.2. Incitement to hatred and discrimination

The decision on a case concerning incitement to hatred and discrimination involves the balancing of three different rights: freedom of expression (Article 10 ECHR), the right to private life (Article 8 ECHR) and the enjoyment without discrimination of the rights and freedoms set forth in the Convention (Article 14 ECHR).

In *Féret v. Belgium*,³¹⁸ the ECtHR held that there had been no violation of Article 10 ECHR in respect of the conviction of a Belgian politician for publicly inciting to racism, hatred and discrimination on leaflets distributed by his political party during election campaigns. The ECtHR ruled that the sanction by the Belgian authorities was prescribed by law and was necessary in a democratic society for the protection of public order and for the protection of the reputation and the rights of others. Three dissenting judges (out of seven) stated that the leaflets were in essence part of a political debate during election time and did not incite to violence nor to any concrete discriminatory act and that criminal convictions in the domain of freedom of political debate and hate speech should only be considered as necessary in a democratic society in cases of direct incitement to violence or discriminatory acts.

³¹⁶ Convention for the Protection of Human Rights and Fundamental Freedoms, <https://www.echr.coe.int/Pages/home.aspx?p=basictexts&c>.

³¹⁷ Judgment of the ECtHR (First Section), Case of *J.D. and A v. the United Kingdom*, (Application nos. 32949/17 and 34614/17), 24 October 2019, <http://hudoc.echr.coe.int/eng?i=001-196897>.

³¹⁸ Judgment of the ECtHR (Second Section), Case of *Féret v Belgium* (Application no. 15615/07), 16 July 2009, <http://hudoc.echr.coe.int/eng?i=001-93627> (available in French).

In *Sigma Radio Television Ltd. v. Cyprus*,³¹⁹ the ECtHR ruled on a decision by the Cyprus Radio and Television Authority (CRTA) which concerned racist and discriminatory remarks in an entertainment series. Despite the fact that the remarks in question were made in the context of a fictional entertainment series, the ECtHR considered, in view of their content, and in the absence of sufficiently detailed information about the programme and specific observations on the part of the applicant, that the CRTA could not be said in the circumstances to have overstepped its margin of appreciation in view of the profound analysis at the national level.

In *Aksu v. Turkey*,³²⁰ the ECtHR decided on a case concerning a book and a dictionary containing statements about Roma people that the applicant considered as an attack on his identity and insulting. The ECtHR observed that discrimination on account of a person's ethnic origin is a form of racial discrimination, and noted that as a result of their turbulent history and constant uprooting, the Roma have become a specific type of disadvantaged and vulnerable minority who require special protection. Despite this, the ECtHR observed that the case did not concern a difference in treatment, and in particular ethnic discrimination, as the applicant did not succeed in producing *prima facie* evidence that the impugned publications had a discriminatory intent or effect. Furthermore, the Grand Chamber held that there had not been a violation of Article 8 ECHR. The Court observed that a dictionary is a source of information which lists the words of a language and gives their various meanings, the basic one being simply descriptive or literal, while others may be figurative, allegorical or metaphorical.

In *Vejdeland and others v. Sweden*,³²¹ the ECtHR ruled that a criminal conviction for distributing leaflets that contained anti-gay statements was considered necessary in a democratic society in order to protect the rights of homosexuals. The ECtHR ruled that, while the applicants' stated aim of starting a debate about the lack of objectivity of education in Swedish schools was an acceptable purpose, regard had to be paid to the wording of the leaflets. The ECtHR reiterated that inciting to hatred does not necessarily entail a call for an act of violence, or other criminal acts, and that attacks on persons committed by insulting, holding up to ridicule or slandering specific groups of the population could be sufficient for the authorities to favour combatting racist speech in the face of freedom of expression exercised in an irresponsible manner.³²²

In *Sousa Goucha v. Portugal*,³²³ the ECtHR ruled in a defamation case concerning a joke in a TV programme about the sexual orientation of a television celebrity in Portugal. The Portuguese courts had ruled that the applicant was a public figure and so must be used

³¹⁹ Judgment of the ECtHR (Fifth Section), Case of *Sigma Radio Television Ltd. v. Cyprus*, (Application nos. 32181/04 and 35122/05), 21 July 2011, <http://hudoc.echr.coe.int/eng?i=001-105766>.

³²⁰ Judgment of the ECtHR (Grand Chamber), Case of *Aksu v. Turkey*, (Application nos. 4149/04 and 41029/04), 15 March 2012, <http://hudoc.echr.coe.int/eng?i=001-109577>.

³²¹ Judgment of the ECtHR (Fifth Section), Case of *Vejdeland and others v. Sweden*, (Application no. 1813/07), 9 February 2012, <http://hudoc.echr.coe.int/eng?i=001-109046>.

³²² For more recent cases on hate speech concerning sexual orientation, see for example, Decision of the ECtHR (Second Section), Case of *Carl Jóhann Lilliendahl v. Iceland* (Application no. 29297/18), 11 June 2020, <http://hudoc.echr.coe.int/eng?i=001-203199> and Judgment of the ECtHR (Second Section), Case of *Beizaras and Levickas v. Lithuania* (Application no. 41288/15), 14 January 2020, <http://hudoc.echr.coe.int/eng?i=001-200344>.

³²³ Judgment of the ECtHR (Fourth Section), Case of *Sousa Goucha v. Portugal* (Application no. 70434/12), 22 March 2016, <http://hudoc.echr.coe.int/eng?i=001-161527>.



to “having his characteristics captured by comedians in order to promote humour.” Moreover, it was public knowledge that his characteristics reflected behaviour that was “attributed to the female gender.” With regard to defamation, the ECtHR reiterated that satire is a form of artistic expression and social commentary and, by its inherent features of exaggeration and distortion of reality, naturally aims to provoke and agitate. Also, a particularly wide margin of appreciation should be given to parody in the context of freedom of expression. The ECtHR noted that the national courts had taken into account the defendants’ lack of intent to attack the applicant’s reputation and assessed the way in which a reasonable spectator of the comedy show in question would have perceived the impugned joke – rather than just considering what the applicant felt or thought towards the joke. The ECtHR also considered that nothing suggested that the Portuguese authorities would have reached different decisions had the applicant not been homosexual.

5.2. Court of Justice of the European Union

In a long list of judgments, the CJEU has explained the meaning of the key provisions of EU anti-discrimination law, notably those included in the Racial Equality Directive (RED) and the Employment Equality Directive (EED).³²⁴

5.2.1. Scope

In *Association Belge des Consommateurs Test-Achats ASBL and Others*,³²⁵ the CJEU confirmed that all EU secondary legislation must comply with the Charter of Fundamental Rights,³²⁶ whereas in *Bartsch*³²⁷ it explained that a prohibition of discrimination is not mandatory where the allegedly discriminatory treatment contains no link with Community law. In *Servet Kamberaj*,³²⁸ the CJEU held that the RED does not cover difference of treatment based on nationality and is without prejudice to provisions and conditions relating to the entry into and residence of third-country nationals and stateless persons on the territory of member states, and to any treatment which arises from the legal status of third-country nationals or stateless persons.

³²⁴ See Chapter 2 of this publication.

³²⁵ Judgment of the Court (Grand Chamber), *Association Belge des Consommateurs Test-Achats ASBL and Others v Conseil des ministres*, Case C-236/09, 1 March 2011, <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1489855902479&uri=CELEX:62009CJ0236>.

³²⁶ Charter of Fundamental Rights of the European Union, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12012P%2FTXT>.

³²⁷ Judgment of the Court (Grand Chamber), *Birgit Bartsch v Bosch und Siemens Hausgeräte (BSH) Altersfürsorge GmbH*, Case C-427/06, 23 September 2008, <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1511775746342&uri=CELEX:62006CJ0427>.

³²⁸ Judgment of the Court (Grand Chamber), *Servet Kamberaj v Istituto per l’Edilizia Sociale della Provincia autonoma di Bolzano (IPES) and Others*, Case C-571/10, 24 April 2012, <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1491912567713&uri=CELEX:62010CJ0571>.

5.2.2. Direct discrimination

Direct discrimination happens when an individual is treated less favourably on the basis of protected grounds in comparison to how others, who are in a similar situation, have been or would be treated. Unlike the ECHR, EU law does not require an identifiable complainant claiming to have been a victim of discrimination in order to establish direct discrimination.³²⁹ In *Feryn*,³³⁰ the CJEU found that the fact that an employer states publicly that it will not recruit employees of a certain ethnic or racial origin constitutes direct discrimination in respect of recruitment since such statements are likely to strongly dissuade certain candidates from submitting their candidature and to hinder their access to the labour market. In *CHEZ*,³³¹ the CJEU held that measures applied in an urban district mainly lived in by inhabitants of a certain ethnic origin were discriminatory on the grounds of ethnic origin, irrespective of whether that collective measure affects persons who have a certain ethnic origin or not. Such measures constitute “direct discrimination if that measure proves to have been introduced and/or maintained for reasons relating to the ethnic origin common to most of the inhabitants of the district concerned.”

In *Hay*,³³² the CJEU ruled that the EED precludes a provision in a collective agreement under which an employee who concludes a civil solidarity pact with a person of the same sex is not allowed to obtain the same benefits as those granted to employees on the occasion of their marriage, where the national rules of the member state concerned do not allow persons of the same sex to marry, in so far as that employee is in a comparable situation to an employee who marries.

The CJEU has also made clear that difference of treatment does not always equal discrimination. In *Glatzel*,³³³ which concerned different rules for different categories of driver licences, the Court explained that these differences were based on the characteristics of the vehicles concerned. Consequently, the situations of the drivers of such vehicles were not comparable. Also, in *Allonby*,³³⁴ the CJEU ruled that a woman whose contract of employment was not renewed and was immediately made available to her previous employer through another undertaking to provide the same services was not entitled to rely, vis-à-vis the intermediary undertaking, on the principle of equal pay, using as a basis

³²⁹ See European Union Agency for Fundamental Rights and Council of Europe, op.cit, p. 43-44.

³³⁰ Judgment of the Court (Second Chamber), *Centrum voor gelijkheid van kansen en voor racismebestrijding v Firma Feryn NV*, Case C-54/07, 10 July 2008, <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1489673676517&uri=CELEX:62007CJ0054>

³³¹ Judgment of the Court (Grand Chamber), *CHEZ Razpredelenie Bulgaria AD v Komisia za zashtita ot diskriminatsia*, Case C-83/14, 16 July 2015, <http://curia.europa.eu/juris/document/document.jsf?docid=165912&doclang=EN>.

³³² Judgment of the Court (Fifth Chamber), *Frédéric Hay v Crédit agricole mutuel de Charente-Maritime et des Deux-Sèvres*, Case C-267/12, 12 December 2013, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62012CJ0267>.

³³³ Judgment of the Court (Fifth Chamber), 22 May 2014, *Wolfgang Glatzel v Freistaat Bayern*, Case C-356/12, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62012CJ0356>.

³³⁴ Judgment of the Court, *Debra Allonby v Accrington & Rossendale College, Education Lecturing Services, trading as Protocol Professional and Secretary of State for Education and Employment*, Case C-256/01, 13 January 2004, <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1489674380678&uri=CELEX:62001CJ0256>.

for comparison the remuneration received for equal work or work of the same value by a man employed by the woman's previous employer.

The CJEU has established that where the detriment suffered by a woman is due to pregnancy,³³⁵ or is related to maternity leave³³⁶ or undergoing in vitro fertilisation treatment,³³⁷ then it constitutes direct discrimination based on sex without the need to compare it with persons in a different situation.

With regard to the need for a causal link between the less favourable treatment and the protected grounds, the CJEU assesses whether the less favourable treatment is due to a protected ground that cannot be separated from the particular factor being complained about.³³⁸ The CJEU has included "discrimination by association" to the scope of the protected ground, in cases where the victim of the discrimination is not the person with the protected characteristic but is treated less favourably because of their association with another individual who possesses a "protected characteristic".³³⁹

5.2.3. Indirect discrimination

According to Article 2(2)(b) of the RED, "indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared to other persons."

Concerning the criterion of an "apparently neutral provision", the CJEU explained in *Isabel Elbal Moreno*³⁴⁰ that a national provision concerning a retirement pension which requires a proportionally greater contribution period from part-time workers than from full-time workers amounted to indirect discrimination on the grounds of sex because the vast majority of part-time workers are women.

The CJEU has applied the concept of "particular disadvantage" in different cases. *Johann Odar*³⁴¹ concerned an occupational social security scheme in the case of workers older than 54 years of age who had been made redundant on operational grounds. Their compensation was calculated on the basis of the earliest possible date on which their pension would begin, with the result that their compensation was lower than the standard formula compensation. According to the CJEU, this scheme disregarded the fact that

³³⁵ See judgments of the CJEU in Case C-177/88 and in Case C-32/93.

³³⁶ See judgment of the CJEU in Case C-191/03.

³³⁷ See judgment of the CJEU in Case C-506/06.

³³⁸ See, for example, the judgments of the CJEU in Case C-267/06 and in Case C-423/04.

³³⁹ See, for example, Judgment of the Court (Grand Chamber), *S. Coleman v Attridge Law and Steve Law*, Case C-303/06, 17 July 2008,

<https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1489857454037&uri=CELEX:62006CJ0303>.

³⁴⁰ Judgment of the Court (Eighth Chamber), *Isabel Elbal Moreno v Instituto Nacional de la Seguridad Social (INSS) and Tesorería General de la Seguridad Social (TGSS)*, Case C-385/11, 22 November 2012, <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1489490371885&uri=CELEX:62011CJ0385>.

³⁴¹ Judgment of the Court (Second Chamber), *Johann Odar v Baxter Deutschland GmbH*, Case C-152/11, 6 December 2012,

<http://curia.europa.eu/juris/document/document.jsf?jsessionid=BFFC6170F3617A68329463DCD1FB1D60?text=&docid=131494&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=14826020>.

severely disabled people face greater difficulties in finding new employment, as well as the fact that those risks tend to become exacerbated as they approach retirement age. In *CHEZ*, the CJEU ruled that the concept of “particular disadvantage” “denotes that it is particularly persons of a given racial or ethnic origin who are at a disadvantage because of the provision, criterion or practice at issue.” A disadvantaging measure could be objectively justified “only if that measure did not go beyond what is appropriate and necessary to achieve those legitimate aims and the disadvantages caused were not disproportionate to the objectives thereby pursued.” In any case, the measure in question should not be of an offensive or stigmatising nature.

5.2.4. Harassment

Harassment is considered by the EED to be discrimination when an unwanted conduct related to a protected ground takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. However, the unwanted conduct does not need to be suffered by the person holding the protected characteristics. In *S. Coleman*,³⁴² the CJEU ruled that the harassment suffered by an employee who is not himself disabled was related to the disability of his child, whose care is provided primarily by that employee .

5.2.5. Justification for less favourable treatment

EU law provides for specific limited exceptions to direct discrimination and an objective justification with regard to indirect discrimination.

5.2.5.1. Objective justification

In *Glatzel*, the CJEU explained that a difference in treatment is justified if the difference relates to a legally permitted aim pursued by the legislation in question, and it is proportionate to the aim pursued by the treatment concerned. In *CHEZ*, the CJEU held that, in order to justify disadvantageous practices, the referring court should determine whether there existed other appropriate and less restrictive means to achieve the pursued aims. If such measures did not exist, such practices would not be disproportionate, only if the service in question was provided in conditions which were not of offensive or stigmatising nature.

With regard to employment, the CJEU has given member states a wide margin of discretion with regard to differential treatment based on broader social and employment

³⁴² Judgment of the Court (Grand Chamber), *S. Coleman v Attridge Law and Steve Law*, Case C-303/06, 17 July 2008, <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1489857454037&uri=CELEX:62006CJ0303>.

policy goals with fiscal implications (the aim of promoting higher education,³⁴³ compensating the disadvantages of career breaks for bringing up children),³⁴⁴ while it seems more reluctant to accept differential treatment based on reasons of management that are related to the economic concerns of employers.³⁴⁵

5.2.5.2. Specific grounds of justification

EU law provides for specific exceptions to direct discrimination related to the field of protection:

- genuine occupational requirements;
- exceptions in relation to religious institutions;
- exceptions particular to age discrimination.

5.2.5.2.1. Genuine occupational requirements

The CJEU has dealt with different cases in which genuine occupational requirements were listed as grounds to differentiate among individuals. In *Asma Bougnaoui*,³⁴⁶ the CJEU found that the concept of a “genuine and determining occupational requirement” referred to a requirement that is “objectively dictated by the nature of the occupational activities concerned or of the context in which they are carried out” and did not cover “subjective considerations, such as the willingness of the employer to take account of the particular wishes of the customer.” In *Mario Vital Pérez*,³⁴⁷ the CJUE stated that the possession of particular physical capacities could be considered as a “genuine and determining occupational requirement” for the purposes of employment as a local police officer. In *Commission v. France*,³⁴⁸ the CJEU found that in certain circumstances it is not unlawful to reserve employment positions primarily for male candidates in male-populated prisons and for female candidates in female-populated prisons. In *Johnston*,³⁴⁹ the CJEU found that a threat to the safety of police officers applied equally to men and women, and that women

³⁴³ Judgment of the Court (Second Chamber), *Maria do Céu Bragança Linares Verruga and Others v Ministre de l'Enseignement supérieur et de la recherche*, Case C-238/15, 14 December 2016, <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1513770583672&uri=CELEX:62015CJ0238>.

³⁴⁴ Judgment of the Court (Fourth Chamber), *Maurice Leone and Blandine Leone v Garde des Sceaux, ministre de la Justice and Caisse nationale de retraite des agents des collectivités locales*, Case C-173/13, 17 July 2014, <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1489756963185&uri=CELEX:62013CJ0173>.

³⁴⁵ European Union Agency for Fundamental Rights and Council of Europe, Handbook on European non-discrimination law, *op.cit.*, p. 94.

³⁴⁶ Judgment of the Court (Grand Chamber), *Asma Bougnaoui and Association de défense des droits de l'homme (ADDH) v Micropole SA*, Case C-188/15, 14 March 2017, <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1491909740687&uri=CELEX:62015CJ0188>.

³⁴⁷ Judgment of the Court (Second Chamber), *Mario Vital Pérez v Ayuntamiento de Oviedo*, Case C-416/13, 13 November 2014, <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1489757177187&uri=CELEX:62013CJ0416>.

³⁴⁸ Judgment of the Court, *Commission of the European Communities v French Republic*, Case 318/86, 30 June 1988, <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1489925369153&uri=CELEX:61986CJ0318>.

³⁴⁹ Judgment of the Court, *Marguerite Johnston v Chief Constable of the Royal Ulster Constabulary*, Case 222/84, 15 May 1986, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61984CJ0222>.

were not at greater risk, so that differential treatment could not be justified on the grounds that public opinion demand that women be protected. In *Mahlburg*,³⁵⁰ the CJEU found that barring a pregnant woman from a permanent post as a nurse was disproportionate because her inability to work in theatre would only be temporary. Restrictions on the working conditions of pregnant women had to be strictly circumscribed to duties that would cause her harm and could not entail a generalised bar to work.

5.2.5.2.2. Religious institutions

In *Egenberger*,³⁵¹ the CJEU explained that where a church or other organisation whose ethos³⁵² is based on religion or belief asserts that religion constitutes a genuine, legitimate and justified occupational requirement, it must be possible for such an assertion to be the subject of effective judicial review. The “genuine, legitimate and justified occupational requirement” must be necessary and objectively dictated by the nature of the occupational activity concerned or the circumstances in which it is carried out, and cannot cover considerations which have no connection with that ethos or with the right of autonomy of the church or organisation.

In *IR v JQ*,³⁵³ the CJEU stated that a difference of treatment as regards a requirement to act in good faith and with loyalty to the ethos of the religious organisation is consistent with that directive only if the religion or belief constitutes an occupational requirement that is genuine, legitimate and justified in the light of the ethos of the church or organisation concerned and is consistent with the principle of proportionality, which is a matter to be determined by the national courts. Should it not be possible for the national courts to interpret the applicable national law in a manner that is consistent with the EED, they would be obliged to provide the legal protection which individuals derive from the general principles of EU law and to guarantee the full effectiveness of the rights that flow from those principles by disapplying any contrary provision of national law.

In *Cresco*,³⁵⁴ the CJEU ruled that national rules stating that Good Friday is a public holiday only for employees who are members of certain Christian churches and that only those employees are entitled, if required to work on that public holiday, to a payment in

³⁵⁰ Judgment of the Court (Sixth Chamber), *Silke-Karin Mahlburg v Land Mecklenburg-Vorpommern*, Case C-207/98, 3 February 2000, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61998CJ0207>.

³⁵¹ Judgment of the Court (Grand Chamber), *Vera Egenberger v Evangelisches Werk für Diakonie und Entwicklung e.V.*, Case C-414/16, 17 April 2018, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62016CJ0414>.

³⁵² According to the Merriam-Webster dictionary, ethos is defined as “the distinguishing character, sentiment, moral nature, or guiding beliefs of a person, group, or institution”, <https://www.merriam-webster.com/dictionary/ethos>.

³⁵³ Judgment of the Court (Grand Chamber), *IR v JQ*, Case C-68/17, 11 September 2018, <http://curia.europa.eu/juris/document/document.jsf?jsessionid=38EF58C6CB854F0FDB0BE16A3D271F44?text=&docid=205521&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=14978264>.

³⁵⁴ Judgment of the Court (Grand Chamber), *Cresco Investigation GmbH v Markus Achatzi*, Case C-193/17, 22 January 2019, <http://curia.europa.eu/juris/document/document.jsf?text=&docid=210073&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=8616213>.

addition to their regular salary for work done on that day, constitute direct discrimination on grounds of religion.

5.2.5.2.3. Age

According to the EED, differences of treatment on grounds of age may not constitute discrimination, if, within the context of national law, they are objectively and reasonably justified by a legitimate aim, and if the means of achieving that aim are appropriate and necessary. It also allows member states to provide that the fixing for occupational social security schemes of ages for admission or entitlement to retirement or invalidity benefits does not constitute discrimination on the grounds of age, provided this does not result in discrimination on the grounds of sex.

In *Thomas Specht*,³⁵⁵ the CJEU explained that member states “enjoy broad discretion in their choice, not only to pursue a particular aim in the field of social and employment policy, but also in the definition of measures capable of achieving it.”³⁵⁶ In an array of judgments, the CJEU has accepted different aims invoked by the member states.³⁵⁷

Concerning access to benefits under occupational social security schemes, the CJEU affirmed in *HK Danmark* that an exception to the principle of non-discrimination on grounds of age must be interpreted restrictively.³⁵⁸ In *Schmitzer*,³⁵⁹ the CJEU explained that budgetary considerations may underpin the chosen social policy of member states and influence the nature or extent of the measures, but such considerations cannot in themselves constitute a legitimate aim within the meaning of Article 6(1) EED.³⁶⁰

With regard to the justification of difference of treatment, the CJEU explained in *European Commission v Hungary*³⁶¹ that while a national measure’s lack of precision does not imply insufficient justification, it is important that other elements, derived from the general context of the measure concerned, make it possible to identify the underlying aim of that measure for the purposes of review by the courts as to its legitimacy and as to whether the means put in place to achieve that aim are appropriate and necessary.

³⁵⁵ Judgment of the Court (Second Chamber), *Thomas Specht and Others v Land Berlin and Bundesrepublik Deutschland*, Joined Cases C-501/12 to C-506/12, C-540/12 and C-541/12, 19 June 2014, <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1489754097987&uri=CELEX:62012CJ0501>.

³⁵⁶ The CJEU mentions here its judgments in C-411/05 (paragraph 68), and C-45/09 (paragraph 41).

³⁵⁷ See European Union Agency for Fundamental Rights and Council of Europe, *op.cit.*, p. 104.

³⁵⁸ The CJEU mentions here its judgment in Case C-546/11 (paragraph 41).

³⁵⁹ Judgment of the Court (Grand Chamber) *Leopold Schmitzer v Bundesministerin für Inneres*, Case C-530/13, 11 November 2014, <http://curia.europa.eu/juris/document/document.jsf?text=&docid=159446&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=15937111>.

³⁶⁰ Here the CJEU mentions its judgment in Joined Cases C-159/10 and C-160/10 (paragraphs 73 and 74).

³⁶¹ Judgment of the Court (First Chamber), *European Commission v Hungary*, Case C-286/12, 6 November 2012, <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1489927094463&uri=CELEX:62012CJ0286>.

5.2.6. Protected grounds

Under the EU non-discrimination law, the limited list of protected grounds include sex, racial or ethnic origin, age, disability, religion or belief and sexual orientation.

5.2.6.1. Sex

The general principle of non-discrimination on the basis of sex has been applied in many judgments of the CJEU.³⁶²

Concerning the principle of equal pay, the CJEU recalled in *Maurice Leone and Blandine Leone*³⁶³ that EU law precludes not only the application of provisions leading to direct sex discrimination, but also the application of provisions which maintain different treatment between men and women at work as a result of the application of criteria not based on sex where those differences of treatment are not attributable to objective factors unrelated to sex discrimination. Indirect discrimination on grounds of sex arises where a national measure, albeit formulated in neutral terms, puts considerably more workers of one sex at a disadvantage than the other. Such a measure is compatible with the principle of equal pay only if the difference in treatment between the two categories of workers to which it gives rise is justified by objective factors unrelated to any discrimination on grounds of sex.

The CJEU has clarified EU provisions regarding pregnancy and maternity. In *Dekker*,³⁶⁴ the CJEU ruled that an employer is in direct contravention of the principle of equal treatment if he refuses to enter into a contract of employment with a female candidate if this refusal is based on the possible adverse consequences for him of employing a pregnant woman. In *Melgar*,³⁶⁵ the CJEU ruled that the non-renewal of a fixed-term contract motivated by the worker's state of pregnancy constitutes direct discrimination on grounds of sex, and in *Busch*,³⁶⁶ it explained that EU law precludes a requirement that an employee must inform her employer that she is pregnant in the event that, because of certain legislative prohibitions, she will be unable to carry out all of her duties.

³⁶² See, for example, judgments of the CJEU in Case C-222/14, Case C-43/75, Case C-427/11 and Case C-236/09.

³⁶³ Judgment of the Court (Fourth Chamber), *Maurice Leone and Blandine Leone v Garde des Sceaux, ministre de la Justice and Caisse nationale de retraite des agents des collectivités locales*, Case C-173/13, 17 July 2014, <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1489756963185&uri=CELEX:62013CJ0173>.

³⁶⁴ Judgment of the Court *Elisabeth Johanna Pacifica Dekker v Stichting Vormingscentrum voor Jong Volwassenen (JVJ-Centrum) Plus*, Case C-177/88, 8 November 1990, <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1511777272013&uri=CELEX:61988CJ0177>.

³⁶⁵ Judgment of the Court (Fifth Chamber), *Maria Luisa Jiménez Melgar v Ayuntamiento de Los Barrios*, Case C-438/99, 4 October 2001, <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1511777802825&uri=CELEX:61999CJ0438>.

³⁶⁶ Judgment of the Court (Fifth Chamber), *Wiebke Busch v Klinikum Neustadt GmbH & Co. Betriebs-KG*, Case C-320/01, 27 February 2003, <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1511777560334&uri=CELEX:62001CJ0320>.

5.2.6.2. Gender identity

Under EU non-discrimination law, there is no specific provision for protection against discrimination on grounds of a person's gender identity or gender expression. In *P v. S and Cornwall County Council*, the CJEU ruled that EU law precluded dismissal of a transsexual for a reason related to a gender reassignment.³⁶⁷

5.2.6.3. Sexual orientation

In *Asociația Accept*,³⁶⁸ a shareholder of a football club who presents himself as, and who is considered in the mass media as playing the leading role of that football club, made public statements ruling out the recruitment of a footballer presented as being homosexual. The CJEU ruled that the statements concerned were capable of amounting to “facts from which it may be presumed that there has been ... discrimination” as regards a professional football club. The defendant employer could not deny the existence of such statements by asserting that they came from a person who, while claiming and appearing to play an important role in the management of that employer, was not legally capable of binding it in recruitment matters. The fact that such an employer might not have clearly distanced itself from the statements concerned was a factor which the court hearing the case may take into account in the context of an overall appraisal of the facts. Furthermore, the fact that a professional football club might not have started any negotiations with a view to recruiting a player presented as being homosexual does not preclude the possibility of establishing facts from which it may be inferred that that club has been guilty of discrimination.³⁶⁹

5.2.6.4. Disability

The EED does not include a definition of “disability”, but the European Union has ratified the Convention on the Rights of Persons with Disabilities (CRDP)³⁷⁰ and its provisions form an integral part of the EU's legal framework. Accordingly, the CJEU stated in *HK Danmark*³⁷¹ that the EED should be interpreted in a manner consistent with the CRDP. The CJEU clarified the concept of “disability” “as including a condition caused by an illness medically diagnosed as curable or incurable where that illness entails a limitation which results in particular from physical, mental or psychological impairments which in interaction with various barriers may hinder the full and effective participation of the person concerned in

³⁶⁷ Concerning gender identity, there is no consistent approach across Europe, with states largely divided between those that address it as part of sexual orientation, and those that address it as part of sex discrimination. See European Union Agency for Fundamental Rights and Council of Europe, *op.cit.*, p. 172.

³⁶⁸ Judgment of the Court (Third Chamber), *Asociația Accept v Consiliul Național pentru Combaterea Discriminării*, Case C-81/12, 25 April 2013, <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1489674144271&uri=CELEX:62012CJ0081>.

³⁶⁹ For another CJEU judgment concerning sexual orientation, see *Hay* in Chapter 5.2.2. of this publication.

³⁷⁰ See Chapter 2 of this publication.

³⁷¹ Judgment of the Court (Second Chamber), 11 April 2013, *HK Danmark, acting on behalf of Jette Ring v Dansk almennyttigt Boligselskab* (C-335/11) and *HK Danmark, acting on behalf of Lone Skouboe Werge v Dansk Arbejdsgiverforening, acting on behalf of Pro Display A/S* (C-337/11), <https://eur-lex.europa.eu/eli/dir/2000/78/oj>



professional life on an equal basis with other workers, and the limitation is a long-term one.” However, in *Z v A*,³⁷² the Court recalled that the limitation in question, in interaction with various barriers, must hinder that person’s full and effective participation in professional life on an equal basis with other workers. In the case at hand, the inability to have a child by conventional means did not in itself make it impossible for the claimant to carry out her work or constitute a hindrance to the exercise of her professional activity and, therefore, did not constitute a “disability” within the meaning of the EED. In *Fag og Arbejde*,³⁷³ the Court recalled that EU law does not lay down a general principle of non-discrimination on grounds of obesity as such as regards employment and occupation. Despite this, it ruled that the obesity of a worker constitutes a “disability” where “it entails a limitation resulting in particular from long-term physical, mental or psychological impairments which in interaction with various barriers may hinder the full and effective participation of the person concerned in professional life on an equal basis with other workers.” In *Daouidi*,³⁷⁴ the CJEU ruled that a person finding himself or herself in a situation of temporary incapacity for work for an indeterminate amount of time as a result of an accident at work does not mean that the limitation of that person’s capacity can be classified as being “long-term”. The evidence which makes it possible to find that such a limitation is “long-term” includes the fact that, at the time of the allegedly discriminatory act, the incapacity of the person concerned does not display a clearly defined prognosis as regards short-term progress or the fact that that incapacity is likely to be significantly prolonged before that person has recovered.

5.2.6.5. Age

In *Mangold*,³⁷⁵ the CJEU declared that the principle of non-discrimination in respect of age is a general principle of Community law. In *Dansk Industri*,³⁷⁶ the CJEU ruled that a national court adjudicating in a dispute between private persons is required to interpret provisions of national law in such a way that they may be applied in a manner that is consistent with the directive or, if such an interpretation is not possible, to disapply any provision of

³⁷² Judgment of the Court (Grand Chamber), *Z v A*, Case C-363/12, 18 March 2014, <http://curia.europa.eu/juris/document/document.jsf?jsessionid=765626580CA7B2ED5C0625D0311E5591?text=&docid=149388&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=12447831>.

³⁷³ Judgment of the Court (Fourth Chamber), *Fag og Arbejde (FOA), acting on behalf of Karsten Kaltoft, v Kommunernes Landsforening (KL), acting on behalf of the Municipality of Billund*, Case C-354/13, 18 December 2014, <http://curia.europa.eu/juris/document/document.jsf?text=&docid=160935&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=12302492>.

³⁷⁴ Judgment of the Court (Third Chamber), *Mohamed Daouidi v Bootes Plus SL and Others*, Case C-395/15, 1 December 2016, <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1511778186591&uri=CELEX:62015CJ0395>.

³⁷⁵ Judgment of the Court (Grand Chamber), *Werner Mangold v Rüdiger Helm*, Case C-144/04, 22 November 2005, <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1511774001638&uri=CELEX:62004CJ0144>.

³⁷⁶ Judgment of the Court (Grand Chamber), *Dansk Industri (DI), acting on behalf of Ajos A/S v Estate of Karsten Eigil Rasmussen*, Case C-441/14, 19 April 2016, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62014CJ0441>.



national law that is contrary to the general principle prohibiting discrimination on grounds of age.³⁷⁷

5.2.6.6. Race/ethnic origin

The concepts of “race” or “ethnic origin” are not defined in the RED. The Court has relied on the jurisprudence of the ECtHR for guidance on this matter in, for example *CHEZ*, where it held that the concept of ethnicity, having its origin “in the idea of societal groups marked in particular by common nationality, religious faith, language, cultural and traditional origins and backgrounds, applies to the Roma community” and refers to the judgments of the ECtHR in *Nachova and Others v. Bulgaria*³⁷⁸ and *Sejdić and Finci v. Bosnia and Herzegovina*.³⁷⁹ But the lack of legislative guidance leaves the CJEU with the responsibility of deciding what discrimination on the basis of race or ethnic origin is on a case-by-case basis. For example, in *Jyske Finans*,³⁸⁰ the Court excluded a practice based on the country of birth as a practice based on “ethnic origin”, ruling that the RED did not preclude the practice of a credit institution which requires a customer whose driving licence indicates a country of birth other than that of a member state of the European Union or of the EFTA to produce additional identification in the form of a copy of the customer’s passport or residence permit.³⁸¹

5.2.6.7. Nationality

EU law prohibits discrimination on grounds of nationality in the context of the freedom of movement of persons, which is limited to EU citizens.³⁸² The CJEU found in *Cowan*³⁸³ that, in the case of EU citizens, a state may not make the award of state compensation for harm to the victim of an assault resulting in physical injury subject to the condition that he hold a residence permit or be a national of a country which has entered into a reciprocal agreement with that member state. Concerning residence permits for non-EU citizens, the

³⁷⁷ For information on the the final decision of the Supreme Court of Denmark, see European Union Agency for Fundamental Rights and Council of Europe, *op.cit.*, p. 193, footnote 534.

³⁷⁸ Judgment of the European Court of Human Rights (Grand Chamber), Case of *Nachova and Others v. Bulgaria* (Applications nos. 43577/98 and 43579/98), 6 July 2005, <http://hudoc.echr.coe.int/eng?i=001-69630>.

³⁷⁹ Judgment of the European Court of Human Rights (Grand Chamber), Case of *Sejdić and Finci v. Bosnia and Herzegovina*, (Applications nos. 27996/06 and 34836/06), 22 December 2009, <http://hudoc.echr.coe.int/eng?i=001-96491>.

³⁸⁰ Judgment of the Court (First Chamber), *Jyske Finans A/S v Ligebehandlingsnævnet, acting on behalf of Ismar Huskic*, Case C-668/15, 6 April 2017, http://curia.europa.eu/juris/document/document.jsf?text=&docid=189652&pageIndex=0&doclang=en&mode=_lst&dir=&occ=first&part=1&cid=13051008.

³⁸¹ For a critic view on this judgment, see Liu K., O’Cinneide C., *op.cit.*, pp. 50-51.

³⁸² Freedom of movement and residence may also be granted to nationals of third countries legally resident in the territory of a member state, see European Union Agency for Fundamental Rights and Council of Europe, *op.cit.*, p. 203-204.

³⁸³ Judgment of the Court, *Ian William Cowan v Trésor public*, Case 186/87, 2 February 1989, <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1490005413533&uri=CELEX:61987CJ0186>.



CJEU ruled in *European Commission v the Netherlands*³⁸⁴ that, by applying excessive and disproportionate administrative charges which were liable to create an obstacle to the exercise of the rights conferred by Directive 2003/109/EC³⁸⁵ concerning the status of third-country nationals who are long-term residents, the Netherlands had failed to fulfil its obligations under that directive. Concerning third-country nationals who are not legally resident in the member state concerned, the CJEU decided in *O. Tümer*³⁸⁶ that EU law precluded national legislation under which such persons are not to be regarded as an employee with the right to an insolvency benefit in the event of their employer's insolvency.

5.2.6.8. Religion

In *Achbita*,³⁸⁷ the CJEU established that the prohibition on wearing an Islamic headscarf, which arises from an internal rule of a private undertaking prohibiting the visible wearing of any political, philosophical or religious sign in the workplace, does not constitute direct discrimination based on religion or belief. However, such a rule may constitute indirect discrimination if it is established that the apparently neutral obligation it imposes results, in fact, in persons adhering to a particular religion or belief being put at a particular disadvantage. It might not constitute discrimination if it is objectively justified by a legitimate aim, such as the pursuit by the employer, in its relations with its customers, of a policy of political, philosophical and religious neutrality, and if the means of achieving that aim are appropriate and necessary, which is for the referring court to ascertain.³⁸⁸

³⁸⁴ Judgment of the Court (Second Chamber), 26 April 2012, *European Commission v Kingdom of the Netherlands*, Case C-508/10,

<https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1489925526404&uri=CELEX:62010CJ0508>

³⁸⁵ Council Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents (Consolidated text), 25 November 2003,

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02003L0109-20110520>.

³⁸⁶ Judgment of the Court (Fifth Chamber), , *O. Tümer v Raad van bestuur van het Uitvoeringsinstituut werknemersverzekeringen*, Case C-311/13, 5 November 2014,

<https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1489756034761&uri=CELEX:62013CJ0311>.

³⁸⁷ Judgment of the Court (Grand Chamber), *Samira Achbita and Centrum voor gelijkheid van kansen en voor racismebestrijding v G4S Secure Solutions NV*, Case C-157/15, 14 March 2017, <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1491909874332&uri=CELEX:62015CJ0157>.

³⁸⁸ See also *Asma Bougnaoui* in chapter 5.2.5.2.1 of this publication.

6. State of play

Despite a great deal of effort on the side of legislators, regulators and the industry, there is still a long way to go in order to achieve a satisfactory level of diversity and inclusion in the European audiovisual sector. A workshop organised by the European Audiovisual Observatory on D&I in December 2020 highlighted three key issues:

- The difficulties in measuring progress on on-screen representation: The body of regulation developed in the field of labour law has certainly contributed to pushing the process forward when it comes to off-screen issues, and a lot of good work has been done in more recent years with regard to on-screen representation. What is more complex is measuring the progress made in this area, as representation often depends on perception, and stereotyped portrayals can be harder to fight than quantitative pay gaps.
- The complexity of collecting data on diversity: The lack of harmonisation of data categories and collection methodology reflects the difficulty in gathering meaningful datasets for comparison across different countries, making the whole assessment process very complex. Countries with a leading experience in data collection act as forerunners for the definition of methodologies, which, at the same time, are not always fit for the environment they are exported to. The combination of the different compositions of societies and often diverging legislations with regard to datasets that may be legitimately collected, makes every country tell its own story.
- The need for intersectional approaches: Historically, discussions on diversity and inclusion started with the equality gap between men and women. Over time, the picture has become more nuanced and it has been enriched with further categories, raising the new question of how to deal with the so-called intersections, that is, the areas where minorities or underrepresented groups meet each other. This more refined type of action is still in its early days. What seems to be a challenge in this context is how to avoid the progress made in certain sectors, such as gender equality, being overshadowed by the work to include in the conversation the categories which so far have been less explored, such as sexual orientation, ethnic origins, and disabilities.

The further research that led to this publication helped established a list of the remaining challenges for the future.

6.1. Still work to be done on equality and non-discrimination

According to a report by the European network of legal experts in gender equality and non-discrimination,³⁸⁹ the majority of EU member states provide an anti-discrimination protection that goes beyond the requirements of EU law, and the levelling up of protection across grounds continues in a number of countries.³⁹⁰ Whereas most of the remaining shortcomings in national legislations have been remedied, there are still some gaps that remain in many of the EU member states and candidate countries. There are further issues of concern in the field of enforcement, and in some countries the impression remains of a theoretical legal framework that is in conformity with European legislation but that does not work effectively in practice.³⁹¹

6.2. Multiple screens remain unregulated

While the issue of on-screen representation on TV is regulated in more or less detail according to each country, the online environment is a sort of Wild West when it comes to the on-screen representation of minorities and underrepresented groups. When it comes to discriminatory content, what is illegal offline should be illegal online. However, applying this basic principle to the online world could prove to be virtually impossible because of the difficulties in controlling everything that is posted online every minute and in defining what is illegal and what is not for each concrete case. Furthermore, as explained in Chapter 3, more subtle forms of discrimination regarding on-screen representation are more difficult to grasp, among other reasons because they entail an element of subjectivity that borders the simple exercise of freedom of expression.

Social media providers play an essential role in creating an online space where freedom of expression can flourish and wherein illegal content has no place. Needless to say, these services must respect the law of the land when it comes to illegal content, which in the European Union includes the e-commerce Directive's³⁹² limited exemption of liability for hosting platforms and a prohibition of the general monitoring of their services.³⁹³ This

³⁸⁹ European network of legal experts in gender equality and non-discrimination, "A comparative analysis of non-discrimination law in Europe 2019", <https://www.equalitylaw.eu/downloads/5118-a-comparative-analysis-of-non-discrimination-law-in-europe-2019-1-72-mb>.

³⁹⁰ For more information on the EU legal framework on anti-discrimination see Chapter 2 of this publication.

³⁹¹ See also European network of legal experts in gender equality and non-discrimination, "A comparative analysis of gender equality law in Europe 2019", <https://www.equalitylaw.eu/downloads/5119-a-comparative-analysis-of-gender-equality-law-in-europe-2019-1-35-mb> and Anglmayer I., "Implementation of the Employment Equality Directive in the light of the UN CRPD", European Parliamentary Research Service, [https://www.europarl.europa.eu/RegData/etudes/STUD/2020/654206/EPRS_STU\(2020\)654206_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/654206/EPRS_STU(2020)654206_EN.pdf)

³⁹² Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'), <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32000L0031>.

³⁹³ On 15 December 2020, the European Commission published two new Regulation proposals, the Digital Services Act and the Digital Market Act, which aim at modernising the current legal framework for digital



basic regime is complemented by the sector-specific rules of the revised Audiovisual Media Services Directive (as explained in Chapter 2 of this publication) and stricter rules for four types of content for which illegality has been harmonised at EU level: terrorism, sexual abuse and child pornography, racism and xenophobia, and copyright.³⁹⁴ Beyond these rules, self-regulatory initiatives agreed by the main online platforms, often at the initiative of the European Commission, contain a range of commitments, some of which are directly related to content moderation practices. With regard to online disinformation, in 2018 the main platforms agreed to a Code of Practice,³⁹⁵ which is monitored by the European Commission. Other than that, they exert content moderation on the basis of their own Terms and Conditions, which on many occasions leads to instances where perfectly legal content is removed due to the service provider's decision.

6.3. Benefits and risks linked to the use of AI for content moderation

With regard to the unmanageable size of the potential content to be moderated, technology can be a powerful ally, but it has a dark side too. In particular, the use of Artificial Intelligence (AI) in the online environment for the purposes of organising, monitoring and filtering content can have a negative impact on the right to non-discrimination and the right to equal treatment and equality. In its Feasibility study on a legal framework on Artificial Intelligence design, development and application,³⁹⁶ the Council of Europe's Ad hoc Committee on Artificial Intelligence (CAHAI) noted that "*The impact of the use of AI systems on the prohibition of discrimination and the right to equal treatment is one of the most widely reported upon*". While AI systems can be deployed to detect and mitigate human bias, the use of AI systems can also "enable the perpetuation and amplification of biases and

services, including social media, online market places, and other online platforms, that operate in the European Union, see <https://ec.europa.eu/digital-single-market/en/digital-services-act-package>. For more information on the current EU legal framework of content moderation online, see De Streef, A. et al., *Online Platforms' Moderation of Illegal Content Online*, Study for the committee on Internal Market and Consumer Protection, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2020, [https://www.europarl.europa.eu/RegData/etudes/STUD/2020/652718/IPOL_STU\(2020\)652718_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/652718/IPOL_STU(2020)652718_EN.pdf).

³⁹⁴ See Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017L0541>; Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA (consolidated text),

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02011L0093-20111217>;

Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law, <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32008F0913>; Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC (Text with EEA relevance.), <https://eur-lex.europa.eu/eli/dir/2019/790/oj>.

³⁹⁵ <https://ec.europa.eu/digital-single-market/en/code-practice-disinformation>.

³⁹⁶ Ad hoc Committee on Artificial Intelligence (CAHAI), Feasibility Study, CAHAI(2020)23, 17 December 2020, <https://rm.coe.int/cahai-2020-23-final-eng-feasibility-study-/1680a0c6da>.



stereotypes, sexism, racism, ageism, discrimination based on various grounds and other unjust discrimination (including based on proxies or intersectional grounds), which creates a new challenge to non-discrimination and equal treatment.” The study concludes that “Special attention should be given to the impact of the use of AI systems on gender equality, given the risk that gender-based discrimination, gender stereotypes and sexism might be (inadvertently) perpetuated thereby. Caution is also needed for the potential amplification of discrimination against those who are marginalised and in vulnerable situations more generally, including discrimination based on racial, ethnic or cultural origin and racism which might be perpetuated by AI. The current lack of diversity among the people developing and making decisions in the AI sector is a source of concern, and diverse representation in consultative processes regarding AI system applications in sensitive areas should be encouraged. This would help prevent and mitigate adverse human rights impacts, notably in relation to equality and non-discrimination. It is equally important to consider duly the risk of intersectional discrimination arising from the use of AI systems, as well as treatment based on differentiation grounds or erroneous associations that might not be covered by Article 14 ECHR.”³⁹⁷

This topic was stressed by the European Parliament in its resolution of 21 January 2021 on women’s participation in the digital economy,³⁹⁸ where the European Parliament recalls the importance of eliminating conscious and unconscious gender-discriminatory bias from algorithms, AI applications, videogames and toys that perpetuate harmful gender stereotypes and lead to the reduced participation of women in the digital, AI and ICT fields. Furthermore, in a European Parliament draft resolution on Artificial intelligence in education, culture and the audiovisual sector,³⁹⁹ the European Parliament Culture and Education Committee considers that the use of AI technologies in education, culture and the audiovisual sector could have an impact on “the backbone of fundamental rights and values of our society”, and calls for all AI technologies to be regulated and trained so as to protect non-discrimination and gender equality. The use of biased data that reflect already existing gender inequality or discrimination should be prevented when training AI. Inclusive and ethical datasets should be developed, with the help of stakeholders and civil society, to be used during the “deep learning” process.⁴⁰⁰

³⁹⁷ For more information on the use of AI in the audiovisual sector, see Cappello M. (ed.), *Artificial intelligence in the audiovisual sector*, IRIS Special, European Audiovisual Observatory, Strasbourg, 2020, <https://rm.coe.int/iris-special-2-2020en-artificial-intelligence-in-the-audiovisual-secto/1680a11e0b>.

³⁹⁸ European Parliament resolution of 21 January 2021 on closing the digital gender gap: women’s participation in the digital economy, (2019/2168(INI)), https://www.europarl.europa.eu/doceo/document/TA-9-2021-0026_EN.html

³⁹⁹ European Parliament, “Artificial intelligence in education, culture and the audiovisual sector”, 2020/2017(INI), [https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2020/2017\(INI\)&l=en](https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2020/2017(INI)&l=en).

⁴⁰⁰ See Press release of the European Parliament, “AI technologies must prevent discrimination and protect diversity”, 16 March 2021, <https://www.europarl.europa.eu/news/en/press-room/20210311IPR99709/ai-technologies-must-prevent-discrimination-and-protect-diversity>. After the drafting of this publication, the European Commission proposed a new regulatory framework on AI, see Press release of the European Commission, “Europe fit for the Digital Age: Commission proposes new rules and actions for excellence and trust in Artificial Intelligence”, 21 April 2021, https://ec.europa.eu/commission/presscorner/detail/en/IP_21_1682.



6.4. Concluding remarks

If we had to summarise this publication in one sentence, we could say that the train to equality has not reached its destination yet, but it is nevertheless on the right track. Unfortunately, this long trip has been delayed by an unexpected fellow traveller: the COVID-19 pandemic. As mentioned in the European Commission's 2021 report on gender equality in the European Union,⁴⁰¹ "the pandemic has exacerbated existing inequalities between women and men in almost all areas of life, both in Europe and beyond", and this could probably also be said about the impact of the pandemic on underrepresented groups and ethnic minorities. In the current context, it is difficult to see when we will get out of this dreadful situation and what the post-COVID world will look like. But we will certainly get out of it, and as long as we keep sight of our final destination, this will be but a setback on the way to equality for all.

⁴⁰¹ European Commission, "2021 report on gender equality in the EU", https://ec.europa.eu/info/sites/info/files/aid_development_cooperation_fundamental_rights/annual_report_gender_equality_2021_en.pdf.

A publication
of the European Audiovisual Observatory

