

# Catalogue of demands addressed to the European Commission 2024-2029

**Working Translation from the German Original**

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# Introduction

As a legal and policy association committed to promoting gender equality and a non-discriminatory society, the German Women Lawyers Association (Deutscher Juristinnenbund, djb) offers its **support** to the new European Commission in **tackling the challenges ahead** when it begins its work in autumn 2024 with a catalogue of demands.

The results of the 2024 European Parliament elections are worrying and highlight the major challenges the new European Commission will face. In many member States of the European Union, parties that question the rule of law and democracy and aspire to restrict the rights of women and other marginalised groups systematically have gained support. It will be the task of the democratic parties in the European Parliament, the Council and the European Commission 2024-2029 to counter these tendencies with a **convincing democratic societal concept** based on European values and principles.

Promoting gender equality and combating discrimination are **key objectives of the European Union**, prominently guaranteed in the Treaties (Art. 2 sentence 2 and Art. 3 para. 3 subpara. 2 TEU; Art. 8, Art. 10 and Art. 19 TFEU) and in the Charter of Fundamental Rights (Art. 21, Art. 23 CFR). In the context of its "Gender Equality Strategy", the last European Commission under Ursula von der Leyen achieved some successes in the area of gender equality. Nevertheless, the aspired "Union of Equality", in which gender-based violence, gender discrimination and structural inequality between women and men are in the past, has not yet been achieved. As the "guardian of the treaties" and an influential player in European politics, the new European Commission is therefore called upon to take the EU's guaranteed goals seriously and to safeguard, implement and build on the progress that has been made.

The djb would like to contribute to the efforts to fulfill these challenges with the present catalogue of demands. The djb has compiled a comprehensive set of **specific women's policy demands covering all areas of law** on which the djb expert commissions work. For each area of law, the current *status quo* is first analysed, then specific demands are explained and summarised in a list of demands. Thereby, the djb would like to encourage short and medium-term reforms in the area of gender equality, which the new European Commission should take up and implement swiftly.

## A. Cross-cutting issues

### I. Gender-sensitive transposition and implementation of secondary legislation (in particular the *gender equality acquis*)

Gender equality policy in the EU is primarily shaped by the European Commission, which has the right to propose European legislative acts. In the recent past, the EU has adopted many groundbreaking legal acts, above all directives, which promote gender equality (the *acquis communautaire* on gender equality, the so-called *gender equality acquis*). However, as the European Commission itself has emphasised, it is often not the lack of EU regulations that is the problem, but rather the "fact that EU law is not applied effectively".<sup>1</sup> This phenomenon is particularly evident in areas relevant to women's policy: the directives of this *acquis* are often not at all, not fully or not correctly implemented by the member states. As the so-called "**guardian of the treaties**", the European Commission has the important task (cf. Art. 17 para. 1 TEU) of closely monitoring the implementation of secondary legislation by the Member States and intervening if they do not fulfil the *gender equality acquis*.

In doing so, the Commission must not shy away from **making full use of the legal possibilities**, particularly from using infringement proceedings. Within the scope of its discretionary powers in monitoring implementation, the European Commission has set itself the goal of, first and foremost, "taking decisive action against infringements that run counter to the realisation of important EU policy objectives".<sup>2</sup> The realisation of gender equality was not only one of the Political Guidelines of the last Commission 2019-2024<sup>3</sup> but is also one of the core values of the EU under Article 2 TEU, whose importance, protection and promotion was also emphasised by the European Council as part of the EU Strategic Agenda 2024-2029.<sup>4</sup> It should, therefore, go without saying that the new European Commission will **prioritise** breaches of the implementation obligations in the area of the *gender equality acquis* in its enforcement efforts. Especially against the risk of an authoritarian backlash, the European Commission must safeguard the EU's women's policy successes of recent years.

The European Commission must, therefore, ensure that the directives of the *Gender Equality Acquis* adopted in the last legislative period are implemented consistently, i.e. completely, correctly and within the specified deadline by the Member States. These include, in particular, the Directive on combating violence against women and domestic violence,<sup>5</sup> the Pay Transparency Directive,<sup>6</sup> the Directive for management positions<sup>7</sup> and the Compatibility Directive<sup>8</sup>. In addition, the minimum wage directive<sup>9</sup> and the planned tightening of the Directive against human trafficking have the potential to promote gender equality.

The European Commission should actively support the Member States in implementing these directives and strive for a high level of protection and a high standard of gender equality. To achieve this, it should use all the **instruments at its disposal to support the Member States** and implement the recommendations set out in the "*Stocktaking Report on the Commission Working Methods for Monitoring the Application of EU Law*" to improve the various support measures, including with regard to the *gender equality acquis*.<sup>10</sup> Support measures include for example, training,

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1 European Commission, Communication of 2017, "EU law: Better results through better application", 2017/C 18/02, p. 1, available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017XC0119\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017XC0119(01)).

2 European Commission, Communication of 2017, see footnote 1, p. 4.

3 European Commission, The European Commission's priorities 2019-2024, 16 July 2019, available at: [https://commission.europa.eu/strategy-and-policy/priorities-2019-2024\\_en](https://commission.europa.eu/strategy-and-policy/priorities-2019-2024_en).

4 European Council, Communication of 28 June 2024, Strategic Agenda for 2024-2029, available at: <https://www.consilium.europa.eu/de/policies/strategic-agenda-2024-2029/>.

5 Directive (EU) 2024/1385 of 14 May 2024 on combating violence against women and domestic violence, OJ L2024/1385, available at: <http://data.europa.eu/eli/dir/2024/1385/oj> (Directive on combating violence against women and domestic violence).

6 Directive (EU) 2023/970 of 10 May 2023 on strengthening the application of the principle of equal pay for men and women for equal work or work of equal value through pay transparency and enforcement mechanisms, OJ L132/21, available at: <http://data.europa.eu/eli/dir/2023/970/oj> (Pay Transparency Directive).

7 Directive (EU) 2022/2381 of 23 November 2022 on ensuring a balanced representation of women and men among the directors of listed companies and related measures, OJ L315/44, available at: <http://data.europa.eu/eli/dir/2022/2381/oj> (Directive for management positions).

8 Directive (EU) 2019/1158 of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU, OJ L188/79, available at: <http://data.europa.eu/eli/dir/2019/1158/oj> (Reconciliation Directive).

9 Directive (EU) 2022/2041 of 19 October 2022 on adequate minimum wages in the European Union, OJ L275/33, available at: <http://data.europa.eu/eli/dir/2022/2041/oj> (Minimum Wage Directive).

10 Secretariat-General of the European Commission, Commission Staff Working Document - Stocktaking report on the Commission working methods for monitoring the application of EU law', 14 July 2023, available at: [https://commission.europa.eu/publications/stocktaking-report-commission-working-methods-monitoring-application-eu-law\\_en](https://commission.europa.eu/publications/stocktaking-report-commission-working-methods-monitoring-application-eu-law_en).

workshops, implementation guidelines and recommendations, as well as bilateral exchanges and consultations between the European Commission and the Member States.

## Demands for gender-sensitive transposition and implementation of secondary legislation

### The djb calls on the European Commission 2024-2029,

- to prioritise the enforcement of secondary legislation that is essential for the realisation of gender equality as a central objective of the EU (*Gender Equality Acquis*) (↑ p. 2);
- to fully utilise its legal options if Member States do not implement the *gender equality acquis* or do not implement it fully or correctly, and also to use the instrument of infringement proceedings swiftly and consistently (↑ p. 2);
- to support the Member States in implementing the *gender equality acquis* through training, regular bilateral exchanges, consultations and recommendations for action, and guidelines (↑ p. 2).

## II. Gender mainstreaming, in particular gender budgeting

Structural gender inequalities are often already inherent in political and legal measures. Even today, policies aimed at the general public are frequently orientated towards the needs of men as the norm and, therefore, often have an unconsidered negative impact on women and people who do not classify themselves according to the gender binary. Hence, policies must take the different needs and interests of women, men, and non-binary people into account. Genuine gender equality can only be realised if **gender-specific inequalities in resource access** are recognised. The European Commission must also consider the impact of gender stereotypes and traditional roles to anticipate the different effects on women and men and ensure gender equality.

To this end, so-called "*gender mainstreaming*" has become established internationally as a **strategy for realising gender equality**. *Gender mainstreaming* is the consideration of the gender perspective and active promotion of gender equality in all policy areas at all levels and phases of policy development. In concrete terms, when policies, laws or support measures are planned, drawn up, adopted and subsequently implemented, monitored and evaluated, the aim is always to promote equality between women and men and combat discrimination.

One example of this is the handling of the **climate crisis**, which has been proven to affect women particularly badly.<sup>11</sup> The European Commission must, therefore, not let up in its efforts to achieve a climate-neutral Europe and must take the special gender dimension into account in its environmental and climate policy activities.

In its "Strategy for Gender Equality 2020-2025",<sup>12</sup> the Commission has committed itself to *gender mainstreaming*. The djb expressly welcomes this commitment. However, the implementation of the proclaimed intentions is still a long way off in many policy areas and must be **driven forward more strongly** by the new European Commission.

### 1. Gender Impact Assessment

The consequences of political measures and legislative texts must be assessed and evaluated from a gender-specific perspective. The so-called "*gender impact assessment*" plays a key role here. Proposed measures are systematically reviewed in terms of **gender-specific needs** as early as the legislative process preparatory phase, and the impact assessment results are summarised in a report. It makes it possible to assess possible adverse effects on women and people who do not categorise themselves according to the gender binary. According to the *European Institute for Gender Equality* (EIGE), a *gender impact assessment* also has a number of positive effects on the realisation of gender equality, as gender-specific inequalities can only be recognised and addressed explicitly by reviewing the *status quo*.<sup>13</sup>

The European Commission has been working on *gender impact assessment* since 1998<sup>14</sup> and has also emphasised its importance in its 2020 "Strategy to strengthen the application of the Charter of Fundamental Rights".<sup>15</sup> Nevertheless, it has not applied this method across the board. The new European Commission should systematically carry out a gender-specific analysis of the impact of its proposals for new legal acts and make the *gender impact assessment* an **integral part of the existing social impact assessment in the context of the impact assessments**<sup>16</sup>. In addition, the scope of the *social impact assessment* should be expanded, and the *Regulatory Scrutiny Board* should include the results of the *gender impact assessment* in its evaluation.

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11 djb, Press Release No. 22-36 of 18 November 2022, Gender-equitable climate policy - COP27 must send a signal, available at: <https://www.djb.de/presse/pressemitteilungen/detail/pm22-36>.

12 European Commission, Communication of 5 March 2020, A Union of Equality: Gender Equality Strategy 2020-2025, COM/2020/152, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2020:152:FIN>, p. 18 (Gender Equality Strategy).

13 For a detailed description of the procedure: European Institute for Gender Equality (EIGE), Gender impact assessment. Gender Mainstreaming Toolkit, 2017, available at: [https://eige.europa.eu/sites/default/files/documents/eige\\_gender\\_impact\\_assessment\\_gender\\_mainstreaming\\_toolkit.pdf](https://eige.europa.eu/sites/default/files/documents/eige_gender_impact_assessment_gender_mainstreaming_toolkit.pdf).

14 See European Commission, Guide On Gender Impact Assessment, 1998, available at: <https://op.europa.eu/de/publication-detail/-/publication/91d046cb-7a57-4092-b5d3-e4fd68097bb2>.

15 European Commission, Communication of 2 December 2020, "Strategy for strengthening the application of the Charter of Fundamental Rights in the EU", COM(2020) 711 final, p. 18, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX%3A52020DC0711>.

16 For further explanation of the Commission's impact assessments as part of the legislative process: European Commission, Impact Assessments, available at: [https://commission.europa.eu/law/law-making-process/planning-and-proposing-law/impact-assessments\\_en](https://commission.europa.eu/law/law-making-process/planning-and-proposing-law/impact-assessments_en).

## 2. Gender budgeting

*Gender budgeting* is a key component of *gender mainstreaming*. The aim is to sensitise all stakeholders to the problems of gender equality and to ensure that the gender perspective is also consistently included in budgetary decisions.<sup>17</sup> According to the widely used definition of the Council of Europe, *gender budgeting* is an application of *gender mainstreaming* in the budget process.<sup>18</sup> It involves conducting a **gender assessment of budgets**, incorporating a gender perspective at all levels of the budget process and restructuring revenue and expenditure to promote gender equality. For example, a gender-responsive budget recognises elements such as unpaid care work and reprioritises spending to promote equality.<sup>19</sup> In 2003, for example, Anne Havnør, then chair of the European Commission's *Gender Budgeting* Advisory and Working Group, succinctly formulated the need for gender-responsive budgeting: "because it follows from treaty obligations and international commitments, because it is fair and because it makes economic sense".<sup>20</sup>

It is to be welcomed that the European Parliament, the Council and the Commission agreed for the first time to integrate gender-specific elements into the budgetary procedures in the Joint Declaration on the EU's 2014-2020 multi-annual financial framework. This agreement was confirmed and further developed in the provisions for 2021-2027: In the interinstitutional agreement on the multiannual financial framework<sup>21</sup>, the European Commission was obliged to develop a methodology for measuring gender equality-relevant expenditure at programme level. The European Commission has introduced a **methodology for tracking gender equality** for the 2023 EU annual budget that covers all spending programmes. This methodology was repeated for the 2024 budget and will become an integral part of the EU's annual budgetary procedure.

So far, however, the methodology has not been applied to the **administrative expenditure of the EU institutions**.<sup>22</sup> The Commission neither commits itself to a gender-sensitive budget, nor is it recommended to the other EU institutions. There is thus a gap with regard to *gender budgeting*.<sup>23</sup>

In addition, the currently used method to assess a project should **be evaluated**, taking into account the relevant experts, **and revised if necessary**.<sup>24</sup> The current methodology aims to improve *gender mainstreaming* in the Commission's budgetary process by tracking the contribution of policy-making and resource allocation to gender equality objectives. In particular, an intersectional approach must be strengthened in order to be able to address the complexity of experiences of discrimination in the long term through *gender budgeting*.<sup>25</sup> In addition, funding for women's rights organisations remains at the same level in the current financial framework and continues to be precarious and fragile.<sup>26</sup> A gender-sensitive budget also includes long-term funding for women's rights organisations.

Gender equality requirements are also a key aspect of the **Recovery and Resilience Facility (ARF)** as part of the Next Generation EU (NGEU) recovery instrument.<sup>27</sup> Member States must justify their submitted recovery and resilience plan and also explain how the planned measures will contribute to gender equality (Art. 18 (4) (o) of the ARF Regulation<sup>28</sup>). The assessment of the national recovery and resilience plan is the responsibility of the European Commission

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17 Magdalena Sapala/ Rosamund Shreeves, *Gender Responsive Budgeting: Implications for the budget of the European Parliament, 2023*, p. 1, available at: [https://www.europarl.europa.eu/RegData/etudes/STUD/2023/754565/EPRS\\_STU\(2023\)754565\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2023/754565/EPRS_STU(2023)754565_EN.pdf).

18 Council of Europe, *Gender Budgeting: Final report of the Group of Specialists on Gender Budgeting, 2005*, available at: <https://rm.coe.int/1680596143>.

19 Sapala/Shreeves, *Gender responsive budgeting*, see footnote 17, p. 14.

20 A. Havnør, Chair of the Gender Budgeting Working Group of the European Commission's Advisory Committee, "The EU Aspect", paper for the European Parliament's public hearing on "Gender Budgeting: The gender perspective in public budgets" on 23 January 2003, p. 2; cited in: European Parliamentary Research Service, *Gender responsive budgeting: Implications for the budget of the European Parliament*, p. 5, available at: [https://www.europarl.europa.eu/RegData/etudes/STUD/2023/754565/EPRS\\_STU\(2023\)754565\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2023/754565/EPRS_STU(2023)754565_EN.pdf).

21 Point 16 (f) of the interinstitutional agreement on the multiannual financial framework.

22 Sapala/Shreeves, *Gender responsive budgeting*, see footnote 17, p. 11.

23 Sapala/Shreeves, *Gender responsive budgeting*, see footnote 17, p. 11 *et seq.*

24 Cf. Petra Debusscher, *The EU Gender Equality Strategy 2020-2025: the beginning of a new season?*, in: Bart Vanhercke, Sebastiano Sabato and Slavina Spasova (eds.), *Social policy in the European Union: state of play 2022*, p. 104.

25 Cf. Debusscher, *The EU Gender Equality Strategy 2020-2025*, see footnote 24, p. 100 *et seq.* On the concept of intersectionality, see *infra* at p. 8.

26 Cf. Debusscher, *The EU Gender Equality Strategy 2020-2025*, see footnote 24, p. 104.

27 Regulation (EU) 2021/241 of 12 February 2021 establishing the Recovery and Resilience Facility, OJ L 57, 17, available at: ELI: <http://data.europa.eu/eli/reg/2021/241/oj> (ARF Regulation).

28 Regulation (EU) 2021/241 of 12 February 2021, see footnote 27.

(Art. 19 of the ARF Regulation). The European Commission must therefore take its monitoring obligation seriously, especially with regard to the requirements of *gender mainstreaming*.<sup>29</sup>

### 3. Gender equality as an indicator in cyclical dialogue formats

Gender equality is essential to achieving full human potential and sustainable development (see Goal 5 of the UN Sustainable Development Goals<sup>30</sup>). The new European Commission should make determined use of the **cyclical dialogue formats** with the EU Member States to urge them to take effective steps to achieve gender equality.

First, the European Commission should include a gender perspective on rule of law indicators in its annual "**Rule of Law Report**" on the EU's preventive rule of law mechanism and the dialogue it initiates. The Commission's report highlights developments in the Member States in four key areas of the rule of law: the judicial system, the anti-corruption framework, media pluralism and other institutional issues related to the separation of powers.<sup>31</sup> Member States are required to report annually to the Commission on these four pillars. However, these indicators lack a gender-specific approach.<sup>32</sup> In a consistent application of *gender mainstreaming*, the four pillars should also be viewed through the prism of gender equality policy within the framework of the rule of law mechanism and the active promotion of gender equality should be encouraged in all areas analysed. For example, the judicial system should also be analysed from a parity perspective, and the area of "media pluralism" should include media attacks on vulnerable groups (keyword: *hate speech*).<sup>33</sup>

Secondly, as part of its "**Strategy for strengthening the application of the Charter of Fundamental Rights in the EU**"<sup>34</sup>, the European Commission should pay particular attention to compliance with the provisions of the Charter of Fundamental Rights in relation to equality and anti-discrimination policies. To this end, it should include in its future "Annual Reports on the Application of the EU Charter" an annual focus on "Achieving Gender Equality in the Member States".

### Demands on *gender mainstreaming*

#### The djb calls on the European Commission 2024-2029,

- to systematically analyse the gender impact of their proposals for new legislation and make *gender impact assessment* a central component of existing *social impact assessment* (↑ p. 5);
- to extend the *gender budgeting* methodology to the administrative tasks of the EU institutions (↑ p. 5);
- to review the effectiveness of the current *gender budgeting* methodology with the involvement of relevant experts, with a particular focus on intersectionality (↑ p. 5);
- to give serious consideration to gender equality measures in the national recovery and resilience plans submitted by Member States (↑ p. 5);
- to include the rule of law indicators from a gender equality perspective in the context of its "Annual Rule of Law Report" of the preventive EU Rule of Law Mechanism and the resulting dialogue, (↑ p. 6);
- to pay particular attention to compliance with the provisions of the Charter of Fundamental Rights relating to equality and anti-discrimination policies as part of its "Strategy for strengthening the application of the Charter of Fundamental Rights in the EU", and to make the achievement of equality an annual priority (↑ p. 6).

29 Cf. the various measures: European Commission, Recovery and Resilience Scoreboard, January 2023, available at: [https://ec.europa.eu/economy\\_finance/recovery-and-resilience-scoreboard/assets/thematic\\_analysis/scoreboard\\_thematic\\_analysis\\_equality.pdf](https://ec.europa.eu/economy_finance/recovery-and-resilience-scoreboard/assets/thematic_analysis/scoreboard_thematic_analysis_equality.pdf).

30 UN General Assembly, Resolution of 1 September 2015, A /RES/69/315, para. 20 and Goal 5, available at: <https://www.bmfjsf.de/resource/blob/83630/c8afa481a4c1eb1f0b716182db98a4d5/agenda-2030-data.pdf>.

31 European Commission, on the Rule of Law Report 2022, available at: [https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism/2022-rule-law-report\\_en](https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism/2022-rule-law-report_en).

32 For the methodology, see European Commission, European Rule of Law mechanism: Methodology for the preparation of the Annual Rule of Law Report, available at: [https://commission.europa.eu/document/download/72ff8a72-5d69-49ba-8cb6-4300859ee175\\_en?file-name=63\\_1\\_52674\\_rol\\_methodology\\_en.pdf](https://commission.europa.eu/document/download/72ff8a72-5d69-49ba-8cb6-4300859ee175_en?file-name=63_1_52674_rol_methodology_en.pdf).

33 See in detail *infra* p. 12 ff.

34 European Commission, Communication of 2 December 2020, Strategy for strengthening the application of the Charter of Fundamental Rights in the EU, see footnote 15.



### III. Organisational and financial issues

For the next mandate of the European Commission, a new **Gender Equality Commissioner** should be appointed to further develop and coordinate gender equality policy. The achievements of the current legislature have shown the importance of having a gender equality commissioner with an independent profile. The office must be given clear responsibilities and sufficient human and financial resources.

Women and men must also be **equally** represented in the new College of Commissioners, i.e. 50/50. This also applies to all management levels of the Commission; Ursula von der Leyen had already set this goal for the Commission 2019-2024.

The European Commission's **Gender Equality Strategy** 2020-2025 should be relaunched and developed. One of the first important tasks of the new Gender Equality Commissioner will be to present an ambitious programme with concrete targets and actions for the next five years.

The **European Institute for Gender Equality (EIGE)** is the EU's knowledge centre on gender equality issues. It provides valuable information, data and evidence on gender equality in the EU to enable evidence-based policy-making. In order for the EIGE to be able to fulfil its current and potentially future important tasks, it is essential that it is adequately funded and staffed.

The new European Commission will present the proposals for the **EU's next Multiannual Financial Framework (MFF)**. The post-2027 MFF will financially implement the EU's political priorities for the coming years. Once again, the new Commission is called upon to apply *gender budgeting* to all funding programmes in the interests of sustainable, inclusive and intersectional policies, to provide adequate funding for specific gender equality programmes, and to increase and simplify support - including institutional support - for women's organisations.

### Demands on organisational and financial issues

#### The djb calls on the European Commission 2024-2029,

- to establish the office of a Commissioner for Gender Equality in the new legislative period and to present an ambitious gender equality strategy for the period after 2025 (↑ p. 7);
- to ensure a balanced representation (50/50) of women and men in the new College of the Commissioners and at all management levels of the Commission (↑ p. 7);
- to provide the European Institute for Gender Equality (EIGE) with adequate financial and human resources (↑ p. 7);
- to ensure gender equality and adequate funding for funding programmes in its proposals for the next MFF, including long-term funding for women's rights organisations (↑ p. 7).

## IV. Intersectionality and multidimensional discrimination

The concept of "intersectionality" in the narrower sense describes how multiple aspects of discrimination structurally overlap and intertwine in a given situation to create an entirely new form of discrimination.<sup>35</sup> While the term "multiple discrimination" or "multidimensional discrimination" is used to describe several separate cases of discrimination,<sup>36</sup> the intersectional approach recognises that membership to different social groups does not exist in isolation from one another, but results in a new and distinct form of discrimination that is currently not adequately addressed by anti-discrimination law.

The courts and bodies of the **international human rights protection system** have largely begun to engage with and apply intersectional approaches.<sup>37</sup> General comments<sup>38</sup> and decisions<sup>39</sup> of the European Court of Human Rights, the Inter-American Court of Human Rights, the UN Human Rights Committee, the UN Women's Rights Committee and the UN Committee on the Rights of Persons with Disabilities take the concept into account, at least in principle.

It is to be welcomed that, with regard to the Charter of Fundamental Rights and Art. 10 TFEU, multidimensional approaches are also increasingly being pursued in **EU legal texts** and that first steps have also been taken to take intersectional discrimination into account. This can be seen, for example, in the European Parliament's "Resolution of 6 July 2022 on intersectional discrimination in the European Union"<sup>40</sup> and the European Commission's "Gender Equality Strategy 2020-2025"<sup>41</sup>. The establishment of an **Equality Policy Task Force**<sup>42</sup> to facilitate the mainstreaming of equality across different strands (discrimination based on sex, "racial" or ethnic origin, religion or belief, disability, age or sexual orientation), was also an important step and should be continued in the new term of the European Commission.

However, **there is room for improvement** in that the EU's approach is largely limited to multiple discrimination,<sup>43</sup> the full range of aspects of discrimination is largely not taken into account and the concept of intersectional discrimination in directives and regulations has largely only found its way into the recitals.<sup>44</sup> For the most part, multidimensional or intersectional aspects are still not taken into account in the operative parts of secondary legislation, so that their significance in European legislation is currently little more than a symbolic appeal.

In rare individual cases, the combination of several grounds has also been taken into account in the design of **operational provisions**. While this step is generally to be welcomed, focusing only on the combination of gender-based discrimination with other social categories ("sex-plus"<sup>45</sup>), as in the Equal Pay Directive<sup>46</sup> or the Directive on the Protection against Violence<sup>47</sup>, is not enough. It is preferable to focus on the combination of **all potential grounds of discrimination** and thereby addressing the full range of intersectional discrimination.<sup>48</sup>

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35 Kimberlé Crenshaw, Mapping the Margins, Intersectionality, Identity Politics, and Violence Against Women of Colour, in: Stanford Law Review 1991/46, p. 1241 ff. See also the focus "Intersectionality" in the upcoming issue 4/2024 of the newspaper of the German Women Lawyers' Association (djBZ), available in future at <https://www.djb.de/zeitschrift>.

36 The terms "intersectionality" and "multiple discrimination" refer to different concepts and are not uniformly described in the literature. In the case law of international courts, tribunals and bodies, however, they are sometimes used synonymously. For detailed information on the terms in connection with multidimensional discrimination: Susanne Baer, Melanie Bittner and Anna Lena Götsche, Mehrdimensionale Diskriminierung - Begriffe, Theorien und juristische Analyse, prepared on behalf of the Anti-Discrimination Agency, 2010, available at: [https://www.antidiskriminierungsstelle.de/SharedDocs/downloads/DE/publikationen/Expertisen/expertise\\_mehrdimensionale\\_diskriminierung\\_jur\\_analyse.pdf?\\_\\_blob=publicationFile&v=2](https://www.antidiskriminierungsstelle.de/SharedDocs/downloads/DE/publikationen/Expertisen/expertise_mehrdimensionale_diskriminierung_jur_analyse.pdf?__blob=publicationFile&v=2).

37 Jens Theilen, Intersectionality's Travels to International Human Rights Law, Michigan Journal of International Law, Vol. 45, No. 2 (Forthcoming), available at <https://ssrn.com/abstract=4504732>.

38 General Recommendation No. 28 of the UN Committee on the Status of Women, 2010, CEDAW/C/GC/28, para. 18.

39 European Court of Human Rights, *B.S. v. Spain*, judgement of 24 July 2012, 47159/08, para. 62; Inter-American Court of Human Rights, *Artavia Murillo et al. v. Costa Rica*, judgement of 28 November 2012, para. 314; UN Human Rights Committee, *Türkan ./. Costa Rica*, judgement of 28.11.2012, para. 314; UN Human Rights Committee, *Türkan ./. Türkiye*, decision of 17.07.2018, CCPR/C/123/D/2274/2013/Rev.1, para. 7.8; UN Women's Rights Committee, *Kell ./. Canada*, decision of 26.04.2012, CEDAW/C/51/D/19/2008.

40 See European Parliament, Resolution of 06.07.2022, Intersectional discrimination in the EU - the socio-economic situation of women of African, Middle Eastern, Latin American and Asian descent, 2023/C 47/13, available at <https://eur-lex.europa.eu/legal-content/DE/TXT/PDF/?uri=CELEX:52022IP0289&from=EN>.

41 European Commission, Communication of 5 March 2020, Gender Equality Strategy, see footnote 12.

42 European Commission, Communication of 5 March 2020, Gender Equality Strategy, see footnote 12.

43 Bylyiola Solanke, The EU approach to intersectional discrimination in law, in: Abels/Krizsán/MacRae/van der Vleuten/Hartung-MacRae: The Routledge handbook of gender and EU politics, 2023.

44 For example in the Racial Equality Directive, Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, Recital 14 ("multiple discrimination").

45 Solanke, The EU approach to intersectional discrimination in law, see footnote 43.

46 Directive (EU) 2023/970 of 10 May 2023, see footnote 6.

47 Directive (EU) 2024/1385 of 14 May 2024, Protection against Violence Directive, see footnote 5.

48 For example, in the Commission's proposal to reform the Victims' Rights Directive, COM(2023) 424 final, Art. 22 (2).

It is also essential that the European Commission, in its legislative and policy proposals, recognises and addresses the new form of discrimination arising solely from the intersection of intersectional discrimination. The current understanding in European anti-discrimination law leads to **significant gaps in protection**. It is essential that this is structurally recognised and explicitly addressed in order to fully protect all vulnerable people who experience Multiple Discrimination.

## Demands on intersectionality and multidimensional discrimination

### The djb calls on the European Commission 2024-2029,

- to consistently apply both the multidimensional and intersectional approaches in the development, drafting and implementation of new EU policies and legislation, by listening to the perspective of people who experience multiple discrimination and addressing multidimensional and intersectional discrimination in its full range (↑ p. 8 f);
- Regularly and thoroughly review existing policies and legislation for their intersectional impact, in particular in the context of impact assessments (↑ p. 8 *et seq.*);
- to develop guidelines and training concepts that provide the judiciary and other actors in the Member States with clearly defined objectives, indicators and measures for implementing the intersectional approach (↑ p. 8 *et seq.*).

# Systemic discrimination in certain areas of law

## I. Labour, equality and commercial law

Although the European Commission has recognised gender equality in employment as a key objective in its "Gender Equality Strategy 2020-2025",<sup>49</sup> this has not yet been achieved in national and cross-border employment relationships (e.g. along global supply chains or in the organisation of care). Indicators of intersectional, structural discrimination exacerbated by digitalisation and globalisation include the **gender pay gap**, the **gender care gap**, the **gender overall earnings gap** and the **gender pension gap**. Equality at work is the central key to a self-determined life and social participation. Equal opportunities to realise different life models are a prerequisite for women to be able to secure their own livelihoods and live economically independent lives - with or without unpaid care work in addition to gainful employment. A numerically balanced gender ratio is a necessary, but not a sufficient condition for real gender equality in the world of work. This must also include qualitative aspects of non-discriminatory employment, such as in particular the elimination of gender role stereotypes<sup>50</sup> and the associated segregation of the labour market, the creation of flexible and accessible working time models, the enforcement of equal pay, ensuring non-discriminatory personnel selection and decisions (including in the use of AI) as well as protection against sexism and gender-specific health risks at the workplace. The individual claims to certain rights, such as equal pay, information, non-discriminatory selection of personnel, etc., which have dominated European equality law to date, often fail due to financial, personnel and structural barriers to enforcement. In hierarchical employment relationships, too, the well-founded fear of losing one's job thwarts the independent assertion of rights. In addition, a successful lawsuit only affects the plaintiff in question, but not colleagues, who are equally affected, and is therefore unable to change structures, or does so too slowly.

### 1. Non-discrimination in the private sector

The new European Commission should set itself the goal of finally achieving **freedom from discrimination** in private sector companies and provide effective instruments to achieve this. The existing directives and the national laws based on them, which claim to establish gender equality in the labour market, have largely failed because of their weak enforcement power and their focus on individual claims.

It is therefore necessary to **focus** all equality-related legislation more consistently on **collective instruments** and thus make companies effectively responsible for equality. The Management Positions Directive of 2022<sup>51</sup> and, in particular, the Pay Transparency Directive of 2023<sup>52</sup> have been important first steps, in that they make such proactive and effective instruments as reporting obligations and analysis procedures binding at company level and thus take account of changes in company structures.

In the upcoming **implementation of the Pay Transparency Directive** by Member States, the new European Commission should ensure that companies are effectively obliged to develop and implement equality strategies. The national implementation processes must be monitored to ensure that the proactive tools are not watered down with reference to unacceptable bureaucracy for companies and thus put back at the disposal of companies. In particular, Member States need to be encouraged to create effective enforcement instruments and set up effective monitoring institutions. The goal of equal pay as a defining requirement of European law (Art. 157 TFEU) must be consistently pursued. This also means that the European Commission must retain sovereignty over the interpretation of the Directive and prevent from the outset divergent interpretations of the Directive's requirements, for example with regard to the scope of reporting obligations or the provisions on redress procedures. There must also be a clear indication that there is no alternative and that the Directive can be implemented. In this sense, **the djb's concepts for an equality law for the private sector and for an optional working time law** already exist at national level and show how collective approaches can be anchored in national law.<sup>53</sup>

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49 European Commission, Communication of 5 March 2020, Gender Equality Strategy, see footnote 12.

50 See also European Commission, Communication of 5 March 2020, Gender Equality Strategy, see footnote 12, p. 6, which identifies gender stereotypes as the main causes of gender inequality.

51 Directive (EU) 2022/2381 of 23 November 2022, see footnote 7.

52 Directive (EU) 2023/970 of 10 May 2023, see footnote 6.

53 See the focus of the djb's work: Ways to freedom from discrimination in companies, available at: <https://www.djb.de/themen/wege-zur-diskriminierungsfreiheit-in-unternehmen>.

## 2. sustainability regulation

The new European Commission should closely monitor the timely, correct and complete **implementation** of the directives on sustainability regulation and prevent their dilution. The regulation of supply chains and sustainability reporting through the *Corporate Sustainability Reporting Directive*<sup>54</sup> (CSRD) and the *Corporate Sustainability Due Diligence Directive*<sup>55</sup> (Supply Chain Directive, CS3D) offer great potential, so that the European Commission **must** urgently work towards **gender-equitable and gender-sensitive implementation and application**. Monitoring is needed to ensure that companies actually implement the required procedures and that the desired changes in corporate structures and cultures take place, particularly with regard to gender equality aspects.

In addition, a **readjustment of sustainability regulation** is already necessary and is already laid down in the European Commission's review and reporting obligations stipulated in the directives (see, for example, Art. 6 CSRD). In addition to questions of effectiveness, regulation must be more strongly and explicitly geared to gender equality and equity.<sup>56</sup> Operationalisation through legally binding requirements for market players has so far only been carried out selectively for gender issues, which creates great uncertainty at the application level. Gender issues are often neglected because they often remain invisible due to their structural dimension, because they compete with other economic or environmental concerns, or because the responsibility of the state is claimed. However, sustainability is not a vague or even empty principle, but contains clear demands for gender equality, which is not only expressed in Goal 5 of the UN Sustainable Development Goals (SDG 5)<sup>57</sup>. Accordingly, there is an urgent need to concretise social concerns in corporate law to include gender equality issues and gender-specific risks. Such an explicit position is still lacking in the emerging legal infrastructure, but is essential to ensure that these issues are integrated into horizontal application processes and that companies recognise their responsibilities in this regard. Standardisation and participation processes need to be developed accordingly. European sustainability regulation has finally recognised the potential of company law for achieving gender equality in the private sector by identifying the key levers in company law. This path must be consistently pursued and the resistance of the national, strongly closed company law discourse must be overcome.

### Demands on labour, equality and economic law

#### The djb calls on the European Commission 2024-2029,

- to effectively develop instruments such as reporting obligations on non-discrimination in the private sector, to support member states in their implementation, to focus the collective dimension of sustainability regulation more strongly and explicitly on gender justice and equality and to adapt existing regulatory approaches accordingly (↑ p. 10);
- to ensure gender-sensitive and gender-equitable transposition and implementation of the Pay Transparency Directive, the Sustainability Reporting Directive (CSRD) and the Supply Chain Directive (CSDDD) and monitor their timely and full implementation (↑ p. 11).

54 Directive (EU) 2022/2464 of 14 December 2022 amending Regulation (EU) No 537/2014 and Directives 2004/109/EC, 2006/43/EC and 2013/34/EU as regards corporate sustainability reporting, OJ L322, 15, available at: <http://data.europa.eu/eli/dir/2022/2464/oj> (Sustainability Reporting Directive).

55 Directive (EU) 2024/1760 of 13 June 2024 on due diligence obligations of companies with regard to sustainability and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 Text with EEA relevance, OJ L, 2024/1760, available at: <http://data.europa.eu/eli/dir/2024/1760/oj> (Supply Chain Directive).

56 djb Statement No. 24-15 of 24.04.2024, Draft Act implementing Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014 and Directives 2004/109/EC, 2006/43/EC and 2013/34/EU, available at: <https://www.djb.de/presse/stellungnahmen/detail/st24-15>

57 UN General Assembly, Resolution of 1 September 2015, see footnote 30, para. 20 and Goal 5.

## II. Criminal law, in particular gender-specific violence

Violence against women is recognised under international law both as a violation of human rights<sup>58</sup> and as a form of discrimination<sup>59</sup>, which is why states are obliged to refrain from, prevent and protect against such violence and to enable those affected by gender-based violence to effectively exercise their rights. The treaties of European Union law and the Charter of Fundamental Rights also oblige the EU legislator to combat discrimination on the basis of gender and to promote gender equality. The EU has regularly and repeatedly made political commitments to combat gender-based violence comprehensively and effectively.<sup>60</sup>

In the area of criminal law, particularly in the area of gender-specific protection against violence, significant and urgently needed achievements in the area of gender equality have been made at European level in the recent past, particularly at the instigation of the European Commission and the European Parliament. These important steps must be safeguarded and further developed by the future Commission.

The EU's accession to the **Istanbul Convention**<sup>61</sup> (IC) was significant. The IC has been an integral part of EU law since 1 October 2023. However, accession to the EU does not oblige the member states to ratify it at national level. This is urgently needed, because although all EU member states have signed the IC, ratification is still pending in five member states.

The **Directive on combating violence against women and domestic violence** from 2024, which, after long and intensive negotiations, can be seen as a historic step towards harmonised protection against violence for women across Europe, was therefore also significant.

Both legal instruments aim to provide women affected by violence in the EU with non-discriminatory, effective, victim-friendly and low-barrier preventive, criminal-law, interlocking measures to protect them from violence as part of a holistic approach. In particular, the Directive on combating violence against woman and domestic violence, in addition to General Recommendation No. 1 of the IC, obliges the Member States for the first time to penalise digital violence under criminal law. This affects women and other marginalised groups particularly severely and is a threat to democracy due to the so-called "silencing" effect. Women and other marginalised groups are exposed to massive attacks **by anti-democratic, right-wing extremist and anti-feminist forces**, particularly in the digital world, and are thus withdrawing from social and political discourse.<sup>62</sup> Against the backdrop of this effect of gender-specific digital violence that jeopardises democracy, it is urgently advisable that gender equality is also integrated as a yardstick in the **EU rule of law mechanism** through consistent *gender mainstreaming*.<sup>63</sup>

### 1. Maintaining and enforcing the concept of protection against violence that has been achieved

The task of the new European Commission is to maintain this normative concept of protection against violence and to work towards its implementation, to complete and to protect it from attacks by anti-democratic and anti-feminist forces.

As the "guardian of the treaties", it must be a key objective of the Commission to ensure that the implementation of the Directive on combating violence against women and domestic violence is **progressed swiftly** and that its requirements are met. This monitoring by the Commission is particularly necessary in the area of protection against violence,<sup>64</sup> because the previous Victim Protection Directive<sup>65</sup> has already shown that, despite binding EU requirements, the protection of victims and women is often not guaranteed in practice, but - on the contrary - there are considerable

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58 See for example ECtHR, *Opuz v. Turkey*, App. No. 33401/02, Judgement of 9 June 2009, paras. 153, 176, 202.

59 Cf. ECtHR, *Opuz v. Turkey*, No. 33401/02, Judgement of 9 June 2009, para. 202; UN Committee on the Status of Women, Universal Declaration No.

19: Violence against Women (1992), UN doc. CEDAW/C/1992/L.1/Add.15; Inter-American Commission on Human Rights, *Maria da Penha v Brazil*, para. 80.

60 For example, in the Gender Equality Strategy: European Commission, Communication of 5 March 2020, see footnote 12.

61 Council of Europe Convention on preventing and combating violence against women and domestic violence of 11 May 2005, available at: <https://www.coe.int/en/web/istanbul-convention> (Istanbul Convention).

62 On the demand for secure data protection, see below p. 18.

63 On the demand for consistent gender mainstreaming in the EU rule of law mechanism, see above p. 6.

64 On the demand for gender-sensitive realisation and implementation of the *Gender Equality Acquis*, see above p. 2.

65 Directive 2012/29/EU 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Framework Decision 2001/220/JHA, OJ L315, 57, available at: <http://data.europa.eu/eli/dir/2012/29/oj> (Victims' Rights Directive 2012).

deficits in practical implementation in many Member States. Due to its own ratification of the IC, the EU must also implement the objectives and requirements of the IC, insofar as it has the authority to do so.

## 2. Establishment of an EU coordination centre on violence against women

The Commission should set up an **EU coordination centre on violence against women** to monitor the implementation of and compliance with the provisions of the Directive on combating violence against women and domestic violence on the part of the Member States. The *European Institute for Gender Equality* (EIGE) could be considered for this purpose. This coordination centre should serve the consistent and coherent implementation of various legislative instruments. It would not only coordinate the implementation status of the Directive on combating violence against women and domestic violence, but also all European legal instruments on the protection against violence. It can provide the member states with the necessary *expertise*, in particular on the Directive on combating violence against women and domestic violence, as well as *best practices*. In turn, it can support the Commission in monitoring and evaluating the Member States' measures to implement their obligations under the Directive on combating violence against women and domestic violence by providing data and material. When reviewing provisions contained both in the Directive on combating violence against women and domestic violence or other EU directives and in the IC, it should draw on the results of the monitoring of GREVIO, the monitoring body of the IC, on the respective implementation status of the Member State. GREVIO itself is in close dialogue with civil society, which is a key pillar in the review of state human rights obligations. The EU Coordination Unit should also cooperate with the national coordination units, civil society, women's rights and victims' protection organisations in the Member States. It must be provided with sufficient resources and responsibilities for this purpose.

In the event that, taking into account the results of GREVIO, the Commission concludes that a Member State is not complying with its obligations to protect women against violence without discrimination and the other requirements of the Directive on combating violence against women and domestic violence by the transposition deadline of 14 June 2027, it should **make full use of its legal options to enforce transposition** and make consistent use of the EU pilot and infringement procedures,<sup>66</sup> including financial sanctions. Under certain circumstances, it should also consider positive incentives for compliance with the provisions on the protection against violence. The Commission should also enter into direct dialogue with civil society and women's and victims' protection associations in the respective state. As the expertise of the Gender Equality Commissioner is indispensable in this process, the office of the Gender Equality Commissioner should also be established in the new legislative period to ensure effective Europe-wide protection against violence.<sup>67</sup>

## 3. Completion of the violence protection concept

Furthermore, the concept of protection against violence that has been achieved should be completed in terms of standards. The Directive on combating violence against women and domestic violence reveals an important gap: the inclusion of a common **Europe-wide definition of rape** (Art. 5 of the draft directive<sup>68</sup>), which was removed from the text of the Directive during the negotiations - partly due to resistance from the German government. In future, five years after the transposition deadline, the Directive should be subject to a review of a uniform offence of rape throughout the European Union. Even if this does not fall directly within the new Commission's term of office, a further aim of the new Commission should be to press ahead with the last European Commission's plan to create a uniform offence of rape throughout the European Union.

Furthermore, the **revision of the Directive establishing minimum standards on the rights, support and protection of victims of crime**<sup>69</sup> -recently proposed by the EU Commission- is to be welcomed. The revision should be a starting

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<sup>66</sup> For the demand for gender-sensitive realisation and implementation of the *Gender Equality Acquis*, see p. 2 above.

<sup>67</sup> Directive 2012/29/EU 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Framework Decision 2001/220/JHA, OJ L315, 57, available at: <http://data.europa.eu/eli/dir/2012/29/oj> (Victims' Rights Directive 2012).

<sup>68</sup> European Commission, Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence, COM/2022/105, submitted on 8 March 2022, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0105>.

<sup>69</sup> European Commission, Proposal for a Directive amending Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, available at: [https://commission.europa.eu/document/42e8087e-96ea-4e7a-aa4c-981a9ced6b6f\\_en?](https://commission.europa.eu/document/42e8087e-96ea-4e7a-aa4c-981a9ced6b6f_en?)

point for the new EU Commission to further expand the protection of victims of gender-based violence. Close dialogue with civil society actors is also essential in the context of this legislative proposal.

#### 4. Data collection with a focus on gender-specific violence

Finally, the European Commission should continue to promote<sup>70</sup> the collection of data at **regular intervals** across Europe on the prevalence and forms of gender-based violence, including its new manifestations. After all, an essential pillar in preventing and combating gender-based violence is knowledge of the phenomenon based on empirically comprehensive, up-to-date and comparable data.

Particularly in the area of **digital violence**, such as hate speech, image-based sexualised violence, cyberstalking and cyberbullying, there is a lack of knowledge about their forms and effects across the EU. Current data collection procedures do not take these into account either. The new European Commission should take this into account and promote data collection in this area with the involvement of the European Institute for Gender Equality (EIGE). Intersectionalities in gender-based violence as well as the motivation of the perpetrators and the consequences for the victims should also be investigated.

#### Demands on criminal law

##### The djb calls on the European Commission 2024-2029,

- to integrate gender equality as a yardstick in the EU rule of law mechanism through gender mainstreaming against the backdrop of the impact of gender-specific digital violence that jeopardises democracy (↑ p. 12);
- to maintain the normative concept of protection against violence achieved with the ratification of the Istanbul Convention and the adoption of the Directive on combating violence against women and domestic violence (↑ p. 12 f.) and to work towards its implementation and completion with regard to a common Europe-wide offence of rape (↑ p. 13 f.);
- to set up an EU coordination centre on violence against women (↑ p. 13);
- to use the ongoing revision of the Directive establishing minimum standards on the rights, support and protection of victims of crime as a starting point for expanding the protection of victims of gender-based violence (↑ p. 13);
- to promote a regular Europe-wide collection of data on the prevalence and forms of gender-based violence, which should also take into account newer forms such as digital gender-based violence (↑ p. 14).

### III Social security law

#### 1. "Paternity leave"

The German government is still failing to introduce at least 10 days paid leave for partners of people who have given birth after the birth of their child (so-called "paternity leave").<sup>71</sup> In doing so, it is failing to fulfil its obligations under the Compatibility Directive<sup>72</sup>. The deadline for transposition has already expired on 2 August 2022, as the djb and others have repeatedly pointed out.<sup>73</sup> The European Commission sent a letter of formal notice to the German Federal Government in September 2022 with the aim of full and timely transposition.<sup>74</sup> According to the German government,

70 A positive development is the "EU survey on gender-based violence against women and other forms of interpersonal violence" (EU-GBV), available at: <https://ec.europa.eu/eurostat/de/web/gender-based-violence/overview>.

71 djb, Press Release No. 24-45 of 6 June 2024, Business and civil society join forces to demand: High time for family start time!, available at: <https://www.djb.de/presse/pressemitteilungen/detail/pm24-45>.

72 Directive (EU) 2019/1158 of 20 June 2019, see footnote 8.

73 djb, Press Release No. 22-39 of 18 November 2022, Equal care even in times of crisis: djb calls for swift implementation of so-called paternity leave!, available at: <https://www.djb.de/presse/pressemitteilungen/detail/pm22-39>.

74 European Commission, press release of 21 September 2022, available at: [https://ec.europa.eu/commission/presscorner/detail/de/inf\\_22\\_5409](https://ec.europa.eu/commission/presscorner/detail/de/inf_22_5409).



the infringement proceedings have since been discontinued.<sup>75</sup> However, as the German Federal Government has still not taken any steps to introduce the so-called "paternity leave" in Germany, the new European Commission is called upon to make decisive use of the **instruments at its disposal** as part of its monitoring function<sup>76</sup> it vis-à-vis the German Federal Government.

## 2. Assisted care benefits in other EU countries

As a result of the increasing mobility of older citizens, there is a growing need to provide those in need of care who spend several months in another EU country (usually for so-called "wintering") with seamless care benefits in kind (from long-term care insurance) during their stay abroad. However, this is only guaranteed in the case of an accompanying professional carer during a short-term stay abroad, which means that non-commercial family care, which is mainly provided by women, has to make do without benefits in kind. In Member States where there is no state care insurance, the care allowance is transferred, but this does not adequately fill this gap in benefits in kind.

People in need of long-term care thus effectively lose their right to appropriate outpatient care during longer stays abroad, cf. Art. 35, 41 Regulation (EC) 883/04<sup>77</sup>; Art. 31 lit. A. para. 1 DVO (EC) 987/09<sup>78</sup>. Domestic care is still mainly provided by women (often wives, daughters, neighbours, friends), which means that the current legal situation deprives non-professional - mostly female - carers of considerable potential relief. The new European Commission should therefore clarify that a "temporary stay" within the meaning of Regulation (EC) 883/04 and implementing Regulation (EC) 987/09 also exists in the case of a change of residence lasting several months, if the intention to return is clear from the outset and the tax liability remains in the country of origin and in this respect there is no change of status.

## 3. Social security for cross-border care work

By 2070, 30% of the EU population will be over 65 years old and the number of people in need of care will rise to 23.6 million.<sup>79</sup> The care work that will be required as a result will increasingly be provided across borders by carers and care assistants, creating chains of care that are unevenly distributed according to the level of prosperity of the Member States. The Posting of Workers Directive<sup>80</sup> already guarantees posted care workers, most of whom are women, a wage at the level of the place of employment, although it is virtually impossible to monitor compliance in private households. However, **carers are referred to their country of origin for social security**. Due to the low level of social security and the lack of monitoring of this security, transnational carers are disadvantaged and completely inadequately covered in the event of pregnancy, maternity, illness, disability and old age.

## 4. Tackling poverty - homelessness among women and children

Through the **European Pillar of Social Rights (EPSR)**<sup>81</sup>, the European Commission is particularly committed to combating poverty (not least child poverty), homelessness and non-discriminatory access to social benefits.

The situation of **homeless migrant EU citizens** is particularly precarious and increasingly includes women and families with children, for example in Germany. There is often a lack of adequate emergency accommodation and policies,

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75 Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, Infringement proceedings on the implementation of the Compatibility Directive, 19 April 2024, available at: <https://www.bmfsfj.de/bmfsfj/themen/familie/familienleistungen/elternzeit/vertragsverletzungsverfahren-zumsetzung-der-vereinbarkeitsrichtlinie--237698>.

76 On the demand for consistent application of legal consequences in the event of missing/incorrect implementation of the *gender equality acquis*, see p. 2 above.

77 Regulation (EC) No 883/2004 of 29 April 2004 on the coordination of social security systems, OJ L166/1, available at: <https://eur-lex.europa.eu/eli/reg/2004/883/oj/deu>.

78 Regulation (EC) No 987/2009 of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems, OJ L284/1, available at: <http://data.europa.eu/eli/reg/2009/987/oj>.

79 Nicolas Schmit, Europe's social market economy in transition, SRa 2022, 210.

80 Directive 96/71/EC of 16 December 1996 concerning the posting of workers in the framework of the provision of services, OJ L18, 1, available at: <https://eur-lex.europa.eu/eli/dir/1996/71/2020-07-30>.

81 Cf. Proclamation of the European Parliament, the Council and the European Commission, 2017, available at: [https://commission.europa.eu/system/files/2017-11/social-summit-european-pillar-social-rights-booklet\\_de.pdf](https://commission.europa.eu/system/files/2017-11/social-summit-european-pillar-social-rights-booklet_de.pdf).

and support systems are not sufficiently geared to the needs of single parents (usually mothers) with children. Pregnant women and mothers with babies or small children who are unable to work are particularly affected by the existing exclusion from benefit.

The Commission is called upon here to **support** the Member States through legislative, financial and policy measures **and to encourage them** to find sustainable solutions. At national level, for example, funding pots and instruments - such as the German programme "EhAP Plus - Eingliederung hilft gegen Ausgrenzung der stärksten benachteiligten Personen" - need to be supplemented and further developed.

**In addition, uniform standards for minimum income schemes** in the Member States are necessary to combat poverty effectively. Against this background, the Council Recommendation on a Minimum Income<sup>82</sup> is expressly welcomed, which also emphasises the Commission's intention to work with the Member States on the benchmarking framework for minimum income schemes. Building on this, the new European Commission should use its powers to work towards the rapid introduction of an **EU framework directive on minimum income schemes**.<sup>83</sup>

## Demands on social security law

### The djb calls on the European Commission 2024-2029,

- to use the instruments at its disposal vis-à-vis the Federal Government to ensure that the provisions of the EU Compatibility Directive with regard to so-called "paternity leave" are finally transposed into German law (↑ p. **Fehler! Textmarke nicht definiert. et seq.**);
- to clarify that a "temporary stay" within the meaning of Regulation (EC) 883/04 and Implementing Regulation (EC) 987/09 also exists in the case of a change of residence lasting several months if the intended return and the remaining tax liability in the country of origin are established from the outset and no change of status takes place (↑ p. **Fehler! Textmarke nicht definiert.**);
- to clarify that the social long-term care insurance funds of the Member States are competent to conclude care contracts (modification of the territoriality principle in line with European law) in order to enable the seamless continuation of the provision of care services in kind for care services authorised in the country of origin while maintaining the quality requirements relevant for authorisation (even when using local professionals) (↑ p. **Fehler! Textmarke nicht definiert.**);
- work towards the re-regulation of transnational care work as a separate sector outside the Posting of Workers Directive, in order to guarantee social security for all care workers at the level of their place of employment (↑ p. **Fehler! Textmarke nicht definiert.**);
- to support the Member States through legislative, financial and policy measures in the fight against poverty and homelessness and non-discriminatory access to social benefits and encourage them to develop sustainable solutions (↑ p. **Fehler! Textmarke nicht definiert.**);
- to work, within the scope of its competences, for the rapid introduction of an EU framework directive on minimum income schemes (↑ p. **Fehler! Textmarke nicht definiert.**).

## IV. Gender-equitable data and digital policy

The EU has committed itself too actively shaping Europe's digital future. In its **digital strategy (2020)**<sup>84</sup>, the European Commission wants to approach the digital transformation as a "commitment to democracy and sustainability", with

<sup>82</sup> European Council, Recommendation of 30 January 2023 on an adequate minimum income to ensure active inclusion, OJ C41, 1, available at: <https://eur-lex.europa.eu/legal-content/DE/TXT/?uri=CELEX%3A32023H0203%2801%29>.

<sup>83</sup> See the demands of the Bundesarbeitsgemeinschaft der Freien Wohlfahrtspflege e. V. of 21 November 2022, available at: <https://www.bagfw.de/themen/europa/detail/stellungnahme-der-bagfw-zum-entwurf-einer-ratsempfehlung-fuer-ein-angemessenes-mindesteinkommen-zur-gewaehrleistung-einer-aktiven-inklusion-vom-28092022>; and the demands of Caritas of 26 March 2021, available at: <https://www.caritas.de/beitraege/armut-und-ausgrenzung-auch-ein-europaeisches-thema/1926059/>.

<sup>84</sup> European Commission, Communication of 19 February 2020, Shaping Europe's Digital Future, COM(2020) 67 Final, available at: [https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/shaping-europes-digital-future\\_en](https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/shaping-europes-digital-future_en).

a value-based approach to "trustworthy artificial intelligence (AI)"<sup>85</sup> and a "data strategy"<sup>86</sup>, which is intended to ensure both the protection of personal data and a single European market for the generation and use of data in Europe. As a result, a large number of regulatory measures have already been adopted. The djb sees the gender-equitable implementation, application and further development of the *EU acquis* in the area of data-based digital applications, in particular algorithmic decision-making systems in the form of artificial intelligence (AI), as one of the greatest challenges of the coming years. This will also determine whether previous equality policy successes can be preserved. Whether a gender-equitable society can be achieved in times of global digitalisation through appropriate European regulation of data-based digital applications or whether **digital violence and digital discrimination phenomena** in the form of the **digital gender gap**<sup>87</sup> and the **gender data gap**<sup>88</sup> will continue to worsen depends crucially on good and **gender-equitable European digital governance**.

## 1. Data quality and gender-equitable technology assessment

Data-based or algorithmic (decision-making) systems derive decisions for the future from historical data on the current gender-unequal society. Such technology can only be used in a gender-equitable way if the aspect of "gender" is given special consideration.<sup>89</sup> In recent years, *data mining* (the automatic extraction of certain information) has led to the aggregation of large amounts of data that are fraught with fundamental problems.<sup>90</sup> Important EU legislation has been passed to regulate data traffic, algorithms and AI, including the *Data Governance Act*<sup>91</sup> on data in the public sector, the *Data Act*<sup>92</sup> on data transfers in the private sector and the Artificial Intelligence Regulation (AI Regulation)<sup>93</sup> on the regulation of data-based algorithmic systems. **Regulations on data quality are still missing.** The current legal policy debate is primarily focussing on the flow of data. *Open data* should be freely available in order to innovatively design products and services using digital technology systems for the common good. The potential for discrimination inherent in company-generated or generally available datasets is not sufficiently taken into account. Improving the transferability of data without sufficient quality standards harbours the risk of exacerbating discrimination and creating more and more inequalities of participation in society instead of innovative applications.

In order to realise the central objective of the AI Regulation to create a "trustworthy AI", the fact that the protection of the **rights and interests of women and persons at risk of discrimination** is generally not ensured by conventional technical development and production processes in the information and communication industry must be taken into account. As long as the AI Regulation appeals to the "voluntary nature" of compliance with codes of conduct, it is to be feared that the avoidance of gender-based discrimination will not be sufficiently acknowledged and implemented as an investment and quality criterion. This applies in particular against the background of costly gender-differentiated data generation. In general, the djb welcomes the value-based regulatory framework for AI systems, which is

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85 Regarding this terminology, the EDPS states in an orientation on ensuring data protection compliance in the use of generative AI systems, p. 6: "The terms 'trustworthy' or 'responsible AI' refer to the need to ensure that AI systems are developed in an ethical and legal manner. This also implies transparency regarding the use of training data and its sources, how algorithms are designed and implemented, what kind of biases may be present in the system and how potential impacts on the fundamental rights and freedoms of individuals are dealt with. In this context, generative AI systems must be transparent, explainable, consistent, verifiable and accessible to ensure fair processing of personal data", available at: [https://www.edps.europa.eu/system/files/2024-06/24-06-03\\_genai\\_orientations\\_en.pdf](https://www.edps.europa.eu/system/files/2024-06/24-06-03_genai_orientations_en.pdf).

86 European Commission, "European Data Strategy", available at: [https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/european-data-strategy\\_de](https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/european-data-strategy_de).

87 The "*Digital Gender Gap*" identifies gender-related differences in the level of digitalisation between women and men. Women achieve a significantly lower level of digitalisation than men. In addition to gender, other socio-demographic aspects such as education, age, wealth, etc. also play a role here. For more information, see Initiative D21 e.V., "*Digital Gender Gap*", available at: <https://initiatived21.de/publikationen/digital-gender-gap/>; the German Federal Government has defined the "*Digital Gender Gap*" more broadly, see BMFSFJ (ed.) Dritter Gleichstellungsbericht "Digitalisierung geschlechtergerecht gestalten", BT-Drs. 19/30750 from 10.06.2021, available at: <https://www.bmfsfj.de/resource/blob/184436/a8af6c4a20b849626c1f735c49928bf0/20210727-dritter-gleichstellungsbericht-data.pdf>.

88 The "gender data gap" captures missing or underrepresented data collection for a specific gender in data collection procedures; fundamental to this: Caroline Criado-Perez, *Invisible Women*, 2019.

89 On the demand for consistent, effective gender mainstreaming, see p. 4 *et seq* above.

90 From a gender equality policy perspective, there are two fundamental problems with data-based digital technologies. If data-based decisions are made for which gender-related data is relevant without these decisions being based on gender-related data, the reality of life, the interests and needs of women and female-read persons are not taken into account. This significantly increases the likelihood of discrimination. If decisions are made for which gender-related data may have no relevance, but where the underlying data already contains gender bias – which can be assumed to be the rule – discrimination is confirmed and perpetuated.

91 Regulation (EU) 2022/868 of 30 May 2022 on European *datagovernance* and amending Regulation (EU) 2018/1724, OJ L152,1, available at: <http://data.europa.eu/eli/reg/2022/868/2022-06-03> (data governance act).

92 Regulation (EU) 2023/2854 of 13 December 2023 on harmonised rules for fair access to and use of data and amending Regulation (EU) 2017/2394 and Directive (EU) 2020/1828, OJ L, 2023/2854, available at: <http://data.europa.eu/eli/reg/2023/2854/oj> (Data Regulation).

93 Regulation laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (AI Regulation).

graded according to risk. Overall, however, the approach of only regulating many "high-risk"<sup>94</sup> applications, instead of banning them more extensively is not suitable for effectively preventing violations of fundamental rights, surveillance issues and discrimination.

A gender-equitable digital transformation can be achieved by consistently applying a **socio-technical approach**<sup>95</sup>, i.e. political framework conditions, interests and influences of participating organisations, quality of data bases, values of participating persons as well as social, economic and ecological consequences of the use of technology must be taken into account and must be included in decisions on the development, promotion and use of digital technologies. This can be achieved through good *digital governance*. Duty to disclosure can help to initiate an awareness-raising process that prevents the unreflected further use of poor-quality data material. The principles of "Open by Design"<sup>96</sup> and "Open by Default"<sup>97</sup> should be further developed. Concrete anti-discrimination projects and gender-competent digital projects are indispensable components of a "human-centred" technology policy that does not accept discrimination against women and marginalised people as collateral damage. A gender-equitable digitalised society needs genuine socio-technical innovations. This also includes the question of whether digital technology can represent an innovative solution at all and within what limits.

## 2. Data protection, security and participation in digital public spaces

Despite the hopes for more public participation and liberation effects for women and marginalised groups, the **internet** with all its innovative digital applications has so far proven to be a dangerous and misogynistic place and a **threat to the equality of women and people at risk of discrimination and to democracy as such**. Combating digital violence and guaranteeing informational self-determination is not only about protecting individuals, but above all about maintaining a resilient democracy and ensuring participation in public discourse.<sup>98</sup> Fair access to goods and services on digital platforms and ensuring sufficient interoperability between digital services is a prerequisite for the participation of all in a digitalised society. With the *Digital Services Act* (DSA)<sup>99</sup> and the *Digital Market Act* (DMA)<sup>100</sup>, the EU has taken decisive new steps to regulate and secure the digital space, which must now be **implemented and effectively enforced**.

As part of the **evaluation of the DSA** by February 2027 (Art. 91 DSA), the following aspects should be particularly taken into account. With the DSA, the EU has pursued a "system-based regulatory approach", which above all calls for more transparency in deletions according to community rules and corresponding algorithms. Wherever women express themselves publicly online, they risk sexist harassment, pornographic abuse, threats of rape and even death threats. *Deep fakes* and other forms of image-based sexual violence affect women in particular. It is necessary to evaluate whether the enforcement instruments of the DSA are sufficient. The DSA currently offers neither **deletion claims** for those affected nor deadlines for service providers to take action after they have been made aware of illegal content. However, the lack of rigid **deadlines** for the deletion of illegal content in the DSA must not lead to delays in practice. The necessity of an obligation for platforms based in an EU Member State to designate an **authorised representative** in each Member State should also be examined in order to facilitate service and thus enforcement. It is questionable whether a basis for claims for financial compensation against platforms can be created in the form of strict liability, which can be claimed e.g. via associations or other civil society institutions or by supervisory authorities. In the area of image-based sexualised violence, it could also make sense for pornography platforms to have specific

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94 A look at the list of high-risk AI systems in Annex III of the Regulation shows that these are areas of life and areas of application in which discrimination is already taking place - and is potentially perpetuated and increased by the AI systems used. Here, the djb suggests that bans on such technologies should also be considered.

95 As an approach in the context of gender-equitable digitalisation with further evidence in the 3rd Gender Equality Report of the German Federal Government, loc. cit. Fn 4, a socio-technical perspective was adopted long before digitalisation, and the approach was further developed in feminist science and technology research through to socioinformatics.

96 On this approach, see: Wikimedia Foundation, What is open, available at: <https://commons.wikimedia.org/wiki/File:ABC-der-Offenheit.pdf>.

97 Wikimedia Foundation, What is open, see footnote 96.

98 See above p. 12 ff.

99 Regulation (EU) 2022/2065 of 19 October 2022 on a single market for digital services and amending Directive 2000/31/EC, OJ L277, 1, available at: <http://data.europa.eu/eli/reg/2022/2065/2022-10-27>.

100 Regulation (EU) 2022/1925 of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828, available at: <http://data.europa.eu/eli/reg/2022/1925/2022-10-12> (Digital Markets Act).

**prior checking obligations** and separate duties to provide information, as well as the introduction of a domestic **contact person** for those affected by image-based sexualised violence.

When **evaluating the DMA** by May 2026 (Art. 53 DMA), the requirement for interoperability should be reviewed for extensions, in particular for online services social networks.

The **General Data Protection Regulation (GDPR)**<sup>101</sup>, which has been in force since 2018 and is currently being evaluated, should be amended.<sup>102</sup> The processing of personal data in the form of collecting, collating and evaluating information on users and user behaviour by social media providers and operators of online platforms, in particular for the purpose of targeting users with commercial and/or political advertising - **profiling** - is generally unlawful in practice. This is because, in practice, there is no consent in the sense of Art. 7 GDPR due to the lack of an "informed expression of consent". A regulation is urgently required for clarification and due to the widespread unchecked realities of consent. Furthermore, controllers of automated data processing should be obliged by the GDPR to only work with sufficiently representative data sets in order to **prevent discrimination ("Equality by Design")**.

The plan for an **ePrivacy Regulation**<sup>103</sup> should be pursued further in order to relieve the burden on the GDPR, which is not tailored to electronic communication. Effective protection of the confidentiality of communication and privacy on the internet is an indispensable prerequisite for women and vulnerable persons to participate in a digitalised society.

Defining rules for cyber-civil interaction is the current challenge; good European *digital governance* must guarantee **legally secure digital spaces** and, within them, freedom in the sense of freedom of movement, freedom of expression, access and participation for all.

### 3. Digitalisation-related skills

In a **Digital Compass (2021)**<sup>104</sup>, the European Commission has defined four key points in the areas of "skills", "secure and sustainable digital infrastructure", "digital transformation of companies" and "digitalisation of public services". It wants to ensure the promotion of digital skills in all age groups and professions through training and retraining measures and increase access to digital systems by integrating digital technologies and learning methods into education systems. Teaching digital operating skills and STEM training are not enough in a digitalised society. What is needed here is a rethink in **the education sector**. Instead of only demanding technical operating skills - which usually confronts women in particular with increased individual requirements due to their stereotypically female socialisation with little affinity for technology – social science findings and social skills should be integrated into technical institutions and committees in order to make knowledge available for socio-technical innovations. The prerequisite for the participation of all in a digitalised society is the **acquisition of skills for a conscious and self-determined approach to digitalisation** and the ability to both communicate and differentiate oneself in digital spaces (digitalisation-related skills / digital maturity).<sup>105</sup>

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101 Regulation (EU) 2016/679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC, OJ L119, 1, available at: <http://data.europa.eu/eli/reg/2016/679/oj> (General Data Protection Regulation).

102 djb Statement No. 24-03 of 08 February 2024, Report on the General Data Protection Regulation, Feedback period - 11 January 2024 - 08 February 2024, available at: <https://www.djb.de/presse/stellungnahmen/detail/st24-03>.

103 For the current draft: Proposal for a Regulation of the European Parliament and of the Council concerning the respect for private life and the protection of personal data in electronic communications and repealing Directive 2002/58/EC, COM/2017/010 final - 2017/03 (COD), available at: <https://eur-lex.europa.eu/legal-content/DE/ALL/?uri=CELEX:52017PC0010> (Proposal for a Regulation on Privacy and Electronic Communications).

104 See European Commission, Communication of 9 March 2021, 2030 Digital Compass: the European way for the Digital Decade, COM(2021) 118 final, available at: <https://eur-lex.europa.eu/legal-content/DE/TXT/?uri=celex%3A52021DC0118>; and comments on this: European Commission, Europe's Digital Decade: Digital targets for 2030, available at: [https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/europes-digital-decade-digital-targets-2030\\_en](https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/europes-digital-decade-digital-targets-2030_en).

105 A paradigm in the education sector towards "digitalisation-related skills" and away from "operating skills and pure STEM qualifications" in connection with gender-equitable digitalisation is called for by the 3rd Gender Equality Report of the German Federal Government, on the concept of "digital maturity" see: Christian Pieter Hoffmann / Jasmin Weber / Robert Zepic / Vanessa Greger / Helmut Krcmar, Dimensionen digitaler Mündigkeit und politische Beteiligung im Netz, in: I. Engelmann, M. Legrand, & H. Marzinkowski (eds.), Politische Partizipation im Medienwandel (pp. 79-99), 2019, available at: <https://www.ssoar.info/ssoar/handle/document/62262>.

## Demands on digital law

### The djb calls on the European Commission 2024-2029,

- in the further dialogue regarding the use of *open data* measures to prioritise closing gender-specific data gaps and to ensure appropriate data quality based on the principles of "*Open by Design*" and "*Open by Default*" (↑ p. 17);
- in the implementation, enforcement and evaluation measures in connection with the AI Regulation, to ensure that the companies, authorities and organisations involved combine digital technology expertise with sociological and gender expertise (socio-technical approach) so that "*AI made in Europe*" can emerge that recognises the risk of discrimination and exploits the potential for equality (↑ p. 17);
- to include biometric surveillance and chat control in the list of prohibited practices in Art. 5 of the AI Regulation<sup>106</sup> in order to ensure a life free from mass surveillance and control (↑ p. 18);
- within the evaluation of the GDPR to ensure
  - (1) that *profiling* is prohibited (↑ p. 19);
  - (2) that those responsible for automated processing are expressly obliged under Art. 22 GDPR to take appropriate technical and organisational measures both when determining the means and during the actual processing, which ensure that data records on the basis of which decisions are made against individuals are sufficiently representative, in particular with regard to gender (↑ p. 17);
  - (3) that Art. 25 GDPR, which regulates the basic principles of "*privacy by design*" and "*privacy by default*", explicitly includes an "*equality by design*" provision (↑ p. 19);
- within the evaluation of the DMA to ensure that the interoperability requirement in Art. 7 DMA also applies to online social network services (↑ p. 19);
- to resolutely pursue the project of the proposed ePrivacy Regulation (↑ p. 19);
- within the evaluation of the DSA to control
  - (1) whether an obligation for platforms based in an EU Member State to appoint an authorised representative for service of process in each Member State can improve enforcement (↑ p. 18);
  - (2) whether deletion claims for those affected and deadlines for action by service providers can improve enforcement, especially for cases of image-based sexualised violence - e.g. in the form of *deep fakes* (↑ p. 18);
  - (3) whether bases for claims for financial compensation against platforms can be implemented in the form of strict liability, whether specific prior checking obligations and separate duties to provide information can be regulated for pornography platforms and whether a domestic contact person for victims of image-based sexualised violence can be introduced on a mandatory basis (↑ p. 18);
- to ensure the implementation and the enforcement of the DSA and the DMA with sufficient resources;
- to work towards the acquisition of digitalisation-related skills in educational measures and supplement STEM support programmes for women with programmes to ensure socio-technical and gender competence (↑ p. 19).

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<sup>106</sup> In accordance with Art. 112 (1) and (11) of the AI Regulation, the European Commission or the Office for Artificial Intelligence may propose amending Art. 5 of the AI Regulation (list of prohibited practices).

## V. Migration, public service, environment, infrastructure

### 1. Immigration into the labour markets

The European Union is actively participating in the international competition for skilled labour. The focus is rightly widening from highly qualified skilled workers<sup>107</sup> to all workers.<sup>108</sup> It is necessary to take a look at **labour immigration from a gender equality perspective**, because the decision to migrate to a particular country is often made within the family. The opportunity to earn two salaries and thus broaden the basis for the family income and pursue a "*dual career*" has become a key factor in the choice of destination country for most labour migrants.<sup>109</sup> Family reunification also has a demonstrably positive impact on integration in the destination country.<sup>110</sup>

**Families should therefore be attracted** by standardising the requirements for accompanying spouses, offering them integration measures and ensuring their access to the labour market. Mobility within Europe should also be facilitated.

The existing regulations, such as those provided for in the Blue Card Directive<sup>111</sup>, do not yet take this perspective sufficiently into account. The Commission should **review and, if necessary, revise** existing regulations such as the Family Reunification Directive<sup>112</sup> and the Blue Card Directive. In particular, it should standardise the requirements for spouses. It should also not only standardise the period of validity of residence titles within the family, but also the synchronisation of the titles themselves, i.e. in particular the periods of prior residence for the subsequent granting of a permanent residence title and possible naturalisation should be taken into account equally (possibly by legal fiction) and the legal advantages of a special residence title should be extended to the derived residence title of spouses.

### 2. Common European asylum system (CEAS)

The Common European Asylum System (CEAS) regulates the reception of people seeking protection in the Member States of the European Union in ten legal acts. However, the CEAS does not consistently take into account the **interests of vulnerable people** on the move, in particular women travelling alone, unaccompanied parents and families with children, pregnant women and LGBTIQ+ people.<sup>113</sup> Therefore, the entire (non-exhaustive) catalogue of vulnerable people in Art. 24 of Directive 2024/1346<sup>114</sup> must be consistently taken into account when implementing the CEAS. In addition, the Commission should work towards ensuring that the special needs of women travelling alone as refugees are also considered as part of the implementation by the Member States.

The European Commission has presented a joint implementation plan for the CEAS<sup>115</sup>, which is intended to serve as a reference document for the member states for the national implementation of the new asylum regulations. Although the protection of the rights of vulnerable groups is specifically mentioned here, the focus is solely on minors.

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<sup>107</sup> See Directive (EU) 2021/1883 of 20 October 2021 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment and repealing Council Directive 2009/50/EC, available at: <http://data.europa.eu/eli/dir/2021/1883/oj>.

<sup>108</sup> In March 2024, the Commission presented the action plan to address the shortage of labour and skilled workers, see Representation of the European Commission in Luxembourg, press release of 20 March 2024, available at: [https://luxembourg.representation.ec.europa.eu/actualites-et-evenements/actualites/kommission-legt-aktionsplan-zur-behebung-des-arbeits-und-fachkräftemangels-vor-2024-03-20\\_de](https://luxembourg.representation.ec.europa.eu/actualites-et-evenements/actualites/kommission-legt-aktionsplan-zur-behebung-des-arbeits-und-fachkräftemangels-vor-2024-03-20_de).

<sup>109</sup> Mathias Czaika / Christopher Parsons, High-skilled migration in times of global economic crisis, International Migration Institute (IMI) Working Paper, 2016, p. 12, available at: <https://www.migrationinstitute.org/imi-archive/news/high-skilled-migration-in-times-of-global-economic-crisis-new-working-paper>.

<sup>110</sup> Expert Council of German Foundations on Integration and Migration, German integration measures from the perspective of non-EU citizens. The results of the Immigrant Citizens Survey for Germany, 2012, available at: [https://www.svr-migration.de/wp-content/uploads/2023/01/studie-ics\\_svr\\_fb\\_deutschland-8.pdf](https://www.svr-migration.de/wp-content/uploads/2023/01/studie-ics_svr_fb_deutschland-8.pdf).

<sup>111</sup> Directive (EU) 2021/1883 of 20 October 2021 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment and repealing Council Directive 2009/50/EC, OJ L 382, 1, available at: <http://data.europa.eu/eli/dir/2021/1883/oj> (Blue Card Directive).

<sup>112</sup> Directive (EU) 2003/86/EC of 22 September 2003 on the right to family reunification, OJ L251, 12, available at: <http://data.europa.eu/eli/dir/2003/86/oj> (Family Reunification Directive).

<sup>113</sup> Cf. djB, Press Release No. 23-27 of 8 June 2023, "EU must better protect women on the run", available at: <https://www.djb.de/presse/pressemitteilungen/detail/pm23-27>.

<sup>114</sup> Directive (EU) 2024/1346 of 14 May 2024 laying down standards for the reception of applicants for international protection, OJ L, 2024/1346, available at: <http://data.europa.eu/eli/dir/2024/1346/oj>.

<sup>115</sup> European Commission, Communication of 12 June 2024, COM/2024/251, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2024%3A251%3AFIN>.

It is crucial, but it is not enough. On the one hand, the Commission should pay attention to the **protection of vulnerable people**, particularly in the so-called "asylum procedures and return procedures at the border", from which only minors are excluded. Secondly, when determining safe third countries at the European level (Art. 62 Asylum Procedure Regulation) and by the Member States (Art. 64 Asylum Procedure Regulation), it should ensure that **states and parts of states are categorised in accordance with human rights**.

The so-called "**Rwanda model**", in which migrants are deported to a foreign third country while their asylum application is being examined, is unanimously rejected by experts for humanitarian, legal, practical and fiscal reasons.<sup>116</sup> The same applies to other relocation models, such as the "**Italy-Albania model**". The Commission should insist that such plans are pursued neither at the EU level nor in the Member States.

### 3. Women in the public sector

The Directive for management positions<sup>117</sup> has given German law an important impetus for equal rights for women in working life. However, the provisions of the Directive for management positions are only limited to the management bodies of listed companies. Due to the large number of employees in the public sector and the exemplary effect of the public sector, regulations for the public sector are required in parallel to the Directive for management positions. The competence for this arises from Art. 157 para. 3 TFEU, at least for those jobs in the public service where there is no special relationship between the respective job holder and the state as well as the reciprocity of rights and obligations underlying the nationality bond.<sup>118</sup> The European Commission should therefore propose a **new directive to ensure a more balanced representation of women and men in the civil service within the** framework of its right of initiative and taking into account the competences of the EU.

This should include targets for a percentage representation of the underrepresented gender (in accordance with Art. 5 of the Directive for management positions), a specification of the means to achieve these targets and an obligation to report (in accordance with Art. 7 of the Directive for management positions). With regard to the resources available, it would be particularly essential to include a provision stating that - as long as women are underrepresented - they are to be given preference in a recruitment decision if they are equally qualified (in accordance with suitability, aptitude and professional performance pursuant to Art. 33 Para. 2 of the Basic Law; cf. Art. 6 Para. 2 of the Directive for management positions).

### 4. Environment, energy and transport

On average, women and LGBTIQ+ people have fewer financial resources than men. They are more likely to live in particularly polluted areas and are more often dependent on cheap or free forms of transportation and places to stay that do not require them to spend money. In addition, people with care responsibilities are less likely to move from their home to their workplace in a linear fashion, instead completing many tasks en route (so-called trip-chaining behaviour).<sup>119</sup>

While the European Commission has recognised these gender-specific needs in principle in its "Strategy for Gender Equality 2020-2025",<sup>120</sup> the existing regulations on environmental and transport law still do not take sufficient account of these special needs and should therefore be **further developed with a focus on gender equality**, in particular the Sustainable Urban Mobility Plans<sup>121</sup> (SUMP). Health protection standards should also be harmonised (e.g. on environmental zones).

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<sup>116</sup> See as an example the interim injunction issued by the European Court of Human Rights on 14 June 2022 in the case N.S.K. v. United Kingdom, App. No. 28774/2, which stopped the deportation of an Iraqi citizen to Rwanda. Subsequently, interim measures were issued in five similar cases. See also the results of the expert hearing by the German Federal Ministry of the Interior, available at: <https://www.bmi.bund.de/DE/themen/migration/asyl-fluechtlingsschutz/asyl-fluechtlingsschutz/mpk-asylantraege-drittstaaten-artikel.html#doc21231622bodyText2>.

<sup>117</sup> Directive (EU) 2022/2381 of 23 November 2022, see Fn 7.

<sup>118</sup> Cf. ECJ, judgement of 30 September 2003, Case C-405/01, available at: <https://curia.europa.eu/juris/liste.jsf?language=de&jur=C,T,F&num=C-405/01>.

<sup>119</sup> See Stefanie Killinger, Kristin Pfeffer, Anne-Sophie Ritter, Urbane Frauen und Klimaschutz - Zum Rechtsrahmen einer feministischen Verkehrspolitik, *djBZ* 2/2023, p. 59 ff, available at: [https://www.researchgate.net/publication/371798487\\_Urbane\\_Frauen\\_und\\_Klimaschutz\\_-\\_Zum\\_Rechtsrahmen\\_einer\\_feministischen\\_Verkehrspolitik](https://www.researchgate.net/publication/371798487_Urbane_Frauen_und_Klimaschutz_-_Zum_Rechtsrahmen_einer_feministischen_Verkehrspolitik), with further references; *djB*, Statement No. 24-04 of 15 February 2024, Policy Paper: Straßenverkehrsrecht und Straßenrecht geschlechtergerecht gestalten, available at: <https://www.djb.de/presse/stellungnahmen/detail/st24-04>.

<sup>120</sup> European Commission, Communication of 5 March 2020, Gender Equality Strategy, see footnote 12, p. 18.

<sup>121</sup> European Commission, Communication of 14 December 2021, "The new European framework for urban mobility", COM(2021) 811, available at <https://eur-lex.europa.eu/legal-content/DE/TXT/PDF/?uri=CELEX:52021DC0811>.



Within the scope of its competences, the Commission should work towards ensuring that the regulations of the EU-Environmental Noise Directive,<sup>122</sup> the source-related noise directives and for the environmental zones<sup>123</sup> are further developed in such a way that they take into account the **special needs of financially weak households**. As part of the monitoring, implementation and further development of the *European Green Deal* from mobility to industrial policy, the Commission should consistently take gender equality issues into account.

The **energy sector** in particular is an industrial sector in which gender equality is currently particularly poorly realised and gender-specific needs are given particularly little consideration. On the one hand, women are still barely represented on the labour market in the energy sector, particularly in the future-oriented field of renewable energies.<sup>124</sup> Secondly, women are disproportionately affected by energy poverty,<sup>125</sup> the effects of which hit them particularly hard.<sup>126</sup> Against this background, the initiation of the "Gender Equality Platform for the Energy Sector" is expressly to be welcomed.<sup>127</sup> In view of the central role of the energy sector in the implementation of the *European Green Deal* and for future sustainable development, the new European Commission must work vigorously to realise the gender equality policy goals set for the energy sector.

## 5. Infrastructure

People with limited financial resources and those with care responsibilities, a disproportionate number of whom are women, are particularly dependent on a **functioning and cost-effective (state) infrastructure** in order to participate in the labour market. This applies even more in rural and structurally weak areas, where the distances between home and work, places of daily care and care for family members are typically long, than in urban regions.

This necessary infrastructure includes **local public transport services** as well as a stable internet connection; only with the latter can employees participate in home office services offered by companies and authorities as well as telemedicine and educational programmes. However, the infrastructure is typically particularly weak in rural areas. The same applies to the use of **(further) education programmes**. Women's healthcare can also benefit from the expansion of reliable and high-quality digital healthcare and care services.

The "Strategy for Gender Equality 2020-2025"<sup>128</sup> rightly names transport and digitalisation as examples of an intersectional perspective in EU policy. Accordingly, as the European Commission itself has recognised,<sup>129</sup> gender equality should also be **given greater consideration and taken into account** in these areas in order to ensure equal living conditions in rural areas as well. This is not yet happening to a sufficient extent. The existing initiatives on sustainable and intelligent mobility, the expansion of digital healthcare and care and the expansion of broadband must be **organised in a socially and gender-equitable manner**.

The **European funding policy** also has a part to play in such an orientation. The European Investment Bank should specifically take into account the interests of people with limited financial resources and those with care responsibilities outside of cities in rural and structurally weak regions; the new Commission should work towards this.

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122 Directive 2002/49/EC of 25 June 2002 relating to the assessment and management of environmental noise, OJ L 189, 12, available at: <http://data.europa.eu/eli/dir/2002/49/2021-07-29>.

123 See also the Federal Environment Agency's requirements of 19 May 2022, available at: <https://www.umweltbundesamt.de/themen/laerm/umgebungs-laermrichtlinie/umgebungs-laerm-in-europa#phenomena>.

124 International Renewable Energy Agency, Report Renewable Energy: A Gender Perspective, 2019, p. 28 ff, available at: <https://www.irena.org/Publications/2019/Jan/Renewable-Energy-A-Gender-Perspective>; European Institute for Gender Equality (EIGE), Gender and Energy, 2016, p. 5, available at: [https://eige.europa.eu/publications-resources/publications/gender-and-energy?language\\_content\\_entity=en](https://eige.europa.eu/publications-resources/publications/gender-and-energy?language_content_entity=en); Federal Ministry for Economic Affairs and Climate Action (BMWK), G7 Report on Gender Equality & Diversity in the Energy Sector, 2022, p. 42, available at: [https://www.bmwk.de/Redaktion/EN/Publikationen/Energie/publikation-g7-report-on-gender-equality-and-diversity-in-the-energy-sector.pdf?\\_\\_blob=publicationFile&v=1](https://www.bmwk.de/Redaktion/EN/Publikationen/Energie/publikation-g7-report-on-gender-equality-and-diversity-in-the-energy-sector.pdf?__blob=publicationFile&v=1).

125 European Commission, Communication of 5 March 2020, Gender Equality Strategy, see footnote 12, p. 18; EIGE, Gender and Energy, see footnote 124, p. 5.

126 EIGE, Gender and Energy, see footnote 124.

127 European Commission, The European Union's Equality Platform for the Energy Sector, 24 January 2024, available at: [https://managenergy.ec.europa.eu/managenergy-discover/news/european-unions-equality-platform-energy-sector-2024-01-24\\_en](https://managenergy.ec.europa.eu/managenergy-discover/news/european-unions-equality-platform-energy-sector-2024-01-24_en).

128 European Commission, Communication of 5 March 2020, Gender Equality Strategy, see footnote 12.

129 European Commission, Communication of 5 March 2020, Gender Equality Strategy, see footnote 12.

## Demands on migration, public service, environment, infrastructure

### The djb calls on the European Commission 2024-2029,

- in regard to the further development of European regulations on labour mobility, to take into account the interests of families in uniform European standards for accompanying family members, in Europe-wide mobility and in earning a second income (↑ p. 21);
- to consistently take into account the needs of vulnerable refugees as part of its monitoring of the implementation of the CEAS legal acts and to ensure that states and parts of states are categorised as safe third countries in accordance with human rights (↑ p. 22);
- to speak out against plans to outsource asylum procedures to third countries (↑ p. 22);
- to submit a proposal for a directive to ensure a more balanced representation of women and men in the civil service, modelled on the Directive for management positions (↑ p. 22);
- to further develop environmental regulations such as the Environmental Noise Directive or the regulations for environmental zones in such a way that they take into account the special needs of financially weak households and people with care responsibilities (↑ p. 23);
- to consistently take gender equality issues into account as part of its monitoring of the implementation and further development of the *European Green Deal*, from mobility to industrial policy (↑ p. 23);
- to organise the initiatives for sustainable and intelligent mobility, the expansion of digital healthcare and care and the expansion of broadband in a socially and gender-equitable manner (↑ p. 23);
- to work towards ensuring that the European Investment Bank specifically takes into account the interests of people with limited financial resources and those with care responsibilities, particularly in rural and structurally weak regions, when funding infrastructure projects (↑ p. 23).

