



EU Twinning Project TR 08 IB SO 01  
Promoting Gender Equality in Working Life



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## **Component 1**

*Aligning Turkish Legislation  
with the EU Gender Equality Acquis*

### **Activity 1.2**

*Elaboration of a report including  
recommendations and amendment proposals*

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### **Part 4**

*Law on Trade Unions, No. 2821  
Collective Agreements, Strikes and Lock-outs, No. 2822*

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## 1. EU Gender Equality Policy

The following part will examine the approaches taken by the European Union in order to establish gender equality with a view to the most relevant provisions for trade unions and collective bargaining. First of all, equality between men and women is considered a general principle of EU law.<sup>1</sup> The European Court of Justice has supported this view in its jurisprudence.<sup>2</sup>

### 1.1. EU Fundamentals of Positive Action

It is important to note that the EU commits itself to actively install gender equality. It is not satisfied to simply call for the abolition of discriminatory laws, but goes further by calling for positive action measures.

“Positive action” is a broad concept, including a plethora of different strategies which go beyond formal equality of men and women before the law. A workable expert definition describes it as consisting of

“proportionate measures undertaken with the purpose of achieving full and effective equality **in practice** for members of groups that are socially or economically disadvantaged, or otherwise face the consequences of past or present discrimination or disadvantage. In order to achieve this, positive action measures are designed to achieve one or more of the following goals:

- preventing or compensating for disadvantages and discrimination, whether these arose in the past or are still ongoing;
- promoting substantive equality by taking into account the specific situation of members of disadvantaged groups and breaking the cycle of disadvantage associated with membership of a particular group;
- redressing under-representation and promoting diversity in participation of all groups in social, economic, cultural and political life.
- Positive action measures achieve these goals by influencing the way in which social goods, such as employment, education, housing or healthcare, are allocated.”<sup>3</sup>

The Treaties of the European Unions make it clear that the elimination of discrimination against women is paramount in European politics. What is more, the Union commits itself to achieve substantive equality in terms of creating a situation of *de facto* equality for women.

Article 2 TEU states that “[t]he Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.”

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<sup>1</sup> See, e.g., Takis Tridimas, *The General Principles of EU Law* (2<sup>nd</sup> edn, OUP 2006) ch 2.

<sup>2</sup> The case law is enormous; for an overview, see European Commission, *Compilation of case law on the equality of treatment between women and men and on non-discrimination in the European Union* (3<sup>rd</sup> edn, 2009).

<sup>3</sup> ‘Exploring positive action from a legal perspective’ in European Commission, *International perspectives on positive action measures. A comparative analysis in the European Union, Canada, the United States and South Africa* (2009) 24.

Article 3 TEU takes a pro-active approach, declaring the Union's aim to "promote... its values..." and pointing out that the Union

"shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men... In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to... solidarity and mutual respect among peoples... and the protection of human rights,... as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter. ... The Union shall pursue its objectives by appropriate means commensurate with the competences which are conferred upon it in the Treaties."

In other words, the Union commits to promote and achieve equality between men and women – not just to abolish discriminatory provisions.

Article 8 TFEU states that "in all its activities, the Union shall aim to eliminate inequalities, and to promote equality, between men and women."

Article 9 TFEU regards the "fight against social exclusion" one of the principles which should always be taken into account "[i]n defining and implementing [the Union's] policies and activities..."

Article 10 TFEU states that "[i]n defining and implementing its policies and activities, the Union shall aim to combat discrimination based on sex... or sexual orientation."

Article 19 TFEU gives the Council and the European Parliament the power to adopt incentive measures and to take action (under specific conditions) to "combat discrimination based on sex..."

Art 157 TFEU says that "[e]ach Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied. ... With a view to ensuring full equality in practice between men and women in working life, the principle of equal treatment shall not prevent any Member State from maintaining or adopting measures providing for specific advantages in order to make it easier for the underrepresented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers."

This formulation leaves ample room for positive action measures. In its case-law, the ECJ has defined some criteria to assess positive action.<sup>4</sup> "For a measure to be acceptable as 'positive action' for women in employment and occupation it must ... at least objectively, be based on clear and unambiguous criteria, address specific career inequalities and help women to conduct their professional life on a more equal footing with men."<sup>5</sup> Accordingly, Christopher McCrudden and Sacha Prehall from the European Network of Legal Experts in the Field of Gender Equality argue

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<sup>4</sup> To name just a few relevant cases: Case C-450/93 *Eckhard Kalanke v. Freie Hansestadt Bremen* [1995] ECR I-3051; Case C-409/95 *Helmut Marschall v. Land Nordrhein-Westfalen* [1997] ECR I-6363; Case C-158/97 *Georg Badeck and Others, Interveners: Hessische Ministerpräsident and Landesanwalt beim Staatsgerichtshof des Landes Hessen* [2000] ECR I-1875; Case C-407/98 *Katarina Abrahamsson, Leif Anderson/Elisabet Fogelqvist* [2000] ECR I-5539; Case C-476/99; *H. Lommers / Minister Van Landbouw, Natuurbeheer en Visserij* [2002] ECR I-2891; Case C-144/04 *Werner Mangold v. Rüdiger Helm* [2005] ECR I-9981.

For an overview, see: Marc De Vos for the European Commission, *Beyond Formal Equality. Positive Action under Directives 2000/43/EC and 2000/78/EC* (2007) 19.

<sup>5</sup> *ibid.*

that “[t]he Community’s recent turn to positive duties and mainstreaming symbolizes a shift from static prohibition to dynamic aviation.”<sup>6</sup>

In the Strategy for Equality between Women and Men 2010-2015, building on the Roadmap for Gender Equality 2006-2010, the EU Commission states that

“[i]nequalities between women and men violate fundamental rights. They also impose a heavy toll on the economy and result in underutilisation of talent. On the other hand, economic and business benefits can be gained from enhancing gender equality. In order to achieve the objectives of Europe 2020, namely smart, sustainable and inclusive growth, the potential and the talent pool of women need to be used more extensively and more efficiently. Gender roles continue to influence crucial individual decisions: on education, on career paths, on working arrangements, on family and on fertility. These decisions in turn have an impact on the economy and society. It is therefore in everyone’s interest to offer genuine choices equally for women and men throughout the different stages of their lives. Equality is one of five values on which the Union is founded. The Union is bound to strive for equality between women and men in all its activities.”<sup>7</sup>

A similar view is expressed in the EU Gender Equality Pact,<sup>8</sup> urging the Member States to “close gender gaps and combat gender segregation in the labour market,” for instance, by “encourage [ing] the social partners and enterprises to develop and effectively implement initiatives in favour of gender equality and promot[ing] gender equality plans at the workplace.”<sup>9</sup> This pro-active approach which goes beyond formal equality is also mentioned in the Council Recommendation on the promotion of positive action for women (1984).<sup>10</sup> It recommends Member States to

“adopt a positive action policy designed to eliminate existing inequalities affecting women in working life and to promote a better balance between the sexes in employment, comprising appropriate general and specific measures, within the framework of national policies and practices... (a) to eliminate or counteract the prejudicial effects on women in employment or seeking employment which arise from existing attitudes, behaviour and structures based on the idea of a traditional division of roles in society between men and women; (b) to encourage the participation of women in various occupations in those sectors of working life where they are at present under-represented, particularly in the sectors of the future, and at higher levels of responsibility in order to achieve better use of all human resources.”<sup>11</sup>

It also mentions industrial relations, in its request of Member States to take steps in order to “encourage both sides of industry, wherever possible, to promote positive action within their own

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<sup>6</sup> *ibid* 69.

<sup>7</sup> Commission, ‘Strategy for equality between women and men 2010-2015’ (Communication) COM (2010) 491 final, 3.

<sup>8</sup> European Pact for gender equality for the period 2011-2020, annexed to Council Conclusions 7166/11 at the 3073th Employment, Social Policy, Health and Consumer Affairs Council meeting (Brussels, 7 March 2011).

<sup>9</sup> *ibid*, *lit e*.

<sup>10</sup> Council Recommendation 84/635/EEC of 13 December 1984 on the promotion of positive action for women [1984] OJ L331.

<sup>11</sup> *ibid*, s 1.

organizations and the work place, for example by suggesting guidelines, principles, codes of good conduct or good practice or any other appropriate formula for the implementation of such action.”<sup>12</sup>

Finally, Article 3 of the Recast Directive 2006/54/EC, headed “Positive action,” states that “Member States may maintain or adopt measures within the meaning of Article 141(4) of the Treaty with a view to ensuring full equality in practice between men and women in working life.”<sup>13</sup> This principle is also laid down in Article 6 of Council Directive 2004/113/EC regarding equal treatment in the access to and supply of goods and services,<sup>14</sup> and in Article 5 of the Directive 2010/741/EU regarding equal treatment for the self-employed.<sup>15</sup>

## 1.2. EU Fundamentals of Gender Mainstreaming

Another important aspect of achieving gender equality is the concept of “gender mainstreaming”:

“Mainstreaming is an approach which seeks to promote equality by mobilising all areas of law and policy. Rather than relying only on specific measures, such as anti-discrimination legislation, mainstreaming implies that equality needs to be pursued in all activities. In practice, this means that equality needs to be taken into account during policy formulation, implementation and evaluation. ... Whereas positive action involves targeted measures that, inter alia, attempt to compensate for specific disadvantages, mainstreaming has a broader agenda. Its methods are more procedural in nature: incorporating the promotion of equality into decision-making and service delivery. Mainstreaming seeks to change the mindset of policymakers in order that equality becomes a central concern.”<sup>16</sup>

Gender mainstreaming is a central policy of the European Union. Article 29 of the Recast Directive 2006 lays down the duty of Member States to employ gender mainstreaming when “formulating and implementing laws, regulations, administrative provisions, policies and activities in the areas referred to in this Directive.” This principle is also laid down in Article 12 of the Directive 2010/41/EU regarding equal treatment for the self-employed.

In the EU Gender Equality Pact, the Council of the European Union

“reaffirms its commitment to reinforce governance through gender mainstreaming by integrating the gender perspective into all policy areas including external EU actions, also taking into account the critical role of men and boys in the promotion of gender equality, and by ensuring that gender equality effects are taken into account in impact assessments of new EU policies. ... When developing and implementing their National

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<sup>12</sup> *ibid*, s 7.

<sup>13</sup> Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) [2006] OJ L204/23 (Recast Directive).

<sup>14</sup> Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services [2004] OJ L373/37.

<sup>15</sup> Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC [2010] OJ L180/1.

<sup>16</sup> ‘Exploring positive action from a legal perspective’ in European Commission, *International perspectives on positive action measures. A comparative analysis in the European Union, Canada, the United States and South Africa* (2009) 27.

Reform Programmes, the Member States are encouraged to apply a gender equality perspective and to promote gender equality policies, especially concerning the Employment Guidelines, and invited to make appropriate use of agreed gender equality indicators developed within the Joint Assessment Framework and within the follow-up of the Beijing Platform for Action in all relevant policy areas and processes.”<sup>17</sup>

### 1.3. The Role of Trade Unions in Promoting Gender Equality in Working Life

Social dialogue and a strong workers’ representation play a vital role to achieve gender equality in the workplace. In its Action Plan for Gender Equality 2010-15, the ILO pointed out that “social dialogue and tripartism are essential policy tools to advance gender equality in the world of work at international, regional, national, community and enterprise levels.”<sup>18</sup> The less effective trade unions are (in terms of workers’ protection, collective bargaining power, etc.), the less they can be active agents to protect the more vulnerable groups in a society. However, strong trade unions can be (and have been) a major actor in promoting gender equality within a company or a sector.<sup>19</sup> For instance, the work-family-life-balance is one of the major challenges that women in the labour market face.<sup>20</sup> Trade unions are one of the major agents to promote change in this area, as Directive 2010/41 on equal treatment for the self-employed recognizes in Recital (15),<sup>21</sup> since they work with women on all employment levels and therefore have a profound knowledge of needs and gaps. Furthermore, they are actively involved in collective agreement bargaining processes, therefore negotiating the very conditions which majorly influence the word-family-life-balance. Moreover, they would be the perfect institutions to point out gender inequalities in a workplace, to propose adequate solutions and to monitor the long-term impact of respective programs.

The internal constitution of trade unions is also of major importance for gender equality. If an organization seeks to effectively promote equal labour standards, it needs to attract and promote women in its own ranks, as well. Turkish trade unions have extremely few female members.<sup>22</sup> Several trade union organizations, such as the European Trade Union Confederation (ETUC) or the International Trade Union Confederation (ITUC), have repeatedly stressed the importance of equality structures in trade unions.<sup>23</sup>

The European Union has recognized the paramount importance of trade unions and collective bargaining for promoting gender equality in working life.<sup>24</sup>

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<sup>17</sup> European Pact for gender equality for the period 2011-2020, annexed to Council Conclusions 7166/11 at the 3073th Employment, Social Policy, Health and Consumer Affairs Council meeting (Brussels, 7 March 2011) 5.

<sup>18</sup> International Labour Organization, *ILO Action Plan for Gender Equality 2010-15* (Geneva 2010) 54.

<sup>19</sup> Gülay Toksöz, ‘Women’s Employment Situation in Turkey’ (ILO Country Report for the ILO Ankara Office, 2007) ix.

<sup>20</sup> Interview with Julide Sarieroglu, Head of the Women’s Committee, HAKIS (Ankara, Turkey, 21 October 2010).

Interview with Hilal Derici and Ulas Yildiz, TISK (Ankara, Turkey, 21 October 2010).

<sup>21</sup> Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC [2010] OJ L180/1, recital (15).

<sup>22</sup> See, eg, Prime Ministry of Turkey - General Directorate on the Status of Women, *National Action Plan: Gender Equality 2008-2013* (Ankara 2008) 51ff; Gülay Toksöz, ‘Women’s Employment Situation in Turkey’ (ILO Country Report for the ILO Ankara Office, 2007) 94; and others.

<sup>23</sup> International Trade Union Confederation (ITUC), *Living with economic insecurity: women in precarious work* (ITUC 2011) 7; European Trade Union Confederation (ETUC), *Women in Trade Unions in Europe: Bridging the Gaps* (ETUC 2007); Framework of Actions on Gender Equality (2005), Final Draft of the European Social Partners published on 1 March 2005 (Brussels) by ETUC, UNICE/UEAPME, CEEP and ETUC; and others.

<sup>24</sup> The legal basis for social dialogue in the EU can be found in Arts 154 and 155 TFEU. However, in this report, I will **not** elaborate on the general legal provisions relevant to trade unions and collective bargaining in the EU Acquis, since this would go beyond the scope of this project. I only wish to mention that with the Treaty of Lisbon, the EU integrated the Charter of Fundamental Rights, also containing social dialogue provisions. Although the legal meaning of the Charter is still under dispute, it is clear that the inclusion of these rights in the Charter, as well as its adoption

### **1.3.1. EU Acquis on Trade Unions' Role to Promote Gender Equality**

Article 21 of the Recast Directive 2006 states:

“Social dialogue

1. Member States shall, in accordance with national traditions and practice, take adequate measures to promote social dialogue between the social partners with a view to fostering equal treatment, including, for example, through the monitoring of practices in the workplace, in access to employment, vocational training and promotion, as well as through the monitoring of collective agreements, codes of conduct, research or exchange of experience and good practice.

2. Where consistent with national traditions and practice, Member States shall encourage the social partners, without prejudice to their autonomy, to promote equality between men and women, and flexible working arrangements, with the aim of facilitating the reconciliation of work and private life, and to conclude, at the appropriate level, agreements laying down anti-discrimination rules in the fields referred to in Article 1 which fall within the scope of collective bargaining. These agreements shall respect the provisions of this Directive and the relevant national implementing measures.

3. Member States shall, in accordance with national law, collective agreements or practice, encourage employers to promote equal treatment for men and women in a planned and systematic way in the workplace, in access to employment, vocational training and promotion.

4. To this end, employers shall be encouraged to provide at appropriate regular intervals employees and/or their representatives with appropriate information on equal treatment for men and women in the undertaking.

Such information may include an overview of the proportions of men and women at different levels of the organisation; their pay and pay differentials; and possible measures to improve the situation in cooperation with employees' representatives.”

This Article clearly includes trade unions and collective bargaining in gender equality endeavours. The fact that it is included in the Recast Directive 2006 – the most comprehensive Directive in terms of equality between men and women – shows that social dialogue is essential in European equality politics. In (1), the Article proposes a number of gender equality measures which trade unions could take, such as monitoring of labour practices. In (2), the Article demands that Member States encourage the social partners “to conclude, at the appropriate level, agreements laying down anti-discrimination rules in the fields referred to in Article 1 which fall within the scope of collective bargaining.” At the same time, Member States are called on to encourage employers to promote equal treatment for men and women in a planned and systematic way (3). Importantly, (4) refers to the communication of relevant information regarding equal treatment for men and women – such as their “pay and pay differentials; and possible measures to improve the situation in cooperation with employee's representatives.”

Article 23 of the Recast Directive 2006 states:

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via the Treaty of Lisbon, shows the general importance that the Union appoints to social dialogue.



“Compliance

Member States shall take all necessary measures to ensure that:

(a) any laws, regulations and administrative provisions contrary to the principle of equal treatment are abolished;

(b) provisions contrary to the principle of equal treatment in individual or collective contracts or agreements, internal rules of undertakings or rules governing the independent occupations and professions and workers’ and employers’ organisations or any other arrangements shall be, or may be, declared null and void or are amended; ...”

This Article imposes on Member States a positive duty to **take all necessary measures to ensure** that provisions which are contrary to the principle of equal treatment – be it in collective agreements, statutes or any other arrangements – are voided. This also includes statutes of unions.

Article 26 of the Recast Directive 2006 demands that Member States, **in accordance with** (among others) **collective agreements or practice, employers and those responsible for access to vocational training**, take all necessary measures to prevent all forms of discrimination, in particular harassment and sexual harassment in the workplace.

Article 30 of the Recast Directive 2006 makes it the responsibility of Member States to ensure that “measures taken pursuant to this Directive, together with the provisions already in force, **are brought to the attention of all the persons concerned** by all suitable means and, where appropriate, at the workplace.”

Article 17 of the Recast Directive 2006 deals with the effective enforcement of the rights granted by this Directive. It states:

“1. Member States shall ensure that, after possible recourse to other competent authorities including where they deem it appropriate **conciliation procedures, judicial procedures** for the enforcement of obligations under this Directive are available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them, even after the relationship in which the discrimination is alleged to have occurred has ended.

2. Member States **shall ensure that associations, organizations or other legal entities** which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of this Directive are complied with, **may engage, either on behalf or in support of the complainant, with his/her approval, in any judicial and/or administrative procedure** provided for the enforcement of obligations under this Directive. ...”

Directive 2010/41/EU regarding equal treatment for the self-employed ensures that equality measures extend to the self-employment sector. In Article 2(b), it specifically includes “the spouses of self-employed workers ... not being employees or business partners, where they habitually, under the conditions laid down by national law, participate in the activities of the self-employed worker and perform the same tasks or ancillary tasks.”

Council Directive 2010/18/EU<sup>25</sup> regarding parental leave states in Recital (15): “Member States may entrust the social partners, at their joint request, with the implementation of this Directive, as long as such Member States take all the steps necessary to ensure that they can at all times guarantee the results imposed by this Directive.”

The 2009 Revised Framework on Parental Leave by the European social partners states in Clause 5, Section 3: “Member States and/or social partners shall define the status of the employment contract or employment relationship for the period of parental leave.”<sup>26</sup>

### **1.3.2. The Inclusion of Trade Unions in the Scope of the Recast Directive 2006**

Article 14(1)(d) of the Recast Directive 2006 expressly prohibits discrimination on grounds of sex **within** trade unions. It says:

“1. There shall be no direct or indirect discrimination on grounds of sex in the public or private sectors, including public bodies, in relation to:

...

(d) membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations. ...”

Thus, all relevant Articles that prohibit discrimination based on sex also apply **to the relation between trade unions and their** (factual and prospective) **members**.

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<sup>25</sup> Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC [2010] OJ L68/13.

<sup>26</sup> Framework Agreement on Parental Leave (revised) of 18 June 2009, annexed to Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC [2010] OJ L68/13

## 2. Analysis of the Turkish Situation

The examined laws are the **Trade Unions Act, No. 2821, dated 5<sup>th</sup> of May 1983**; and the **Collective Labour Agreement, Strike and Lock-Out Act, No. 2822, dated 5<sup>th</sup> of May 1983**.

Given the (potential) importance of trade unions and collective bargaining processes for the achievement of gender equality as established above, it is clear that trade union and collective bargaining legislation has to be a part of both positive action and gender mainstreaming endeavours. Even though the laws No. 2821 and No. 2822 might not be formally discriminating, they have considerable impact on women and thus could contain pro-active provisions to further women's rights. For a comprehensive equality approach, it is necessary to include trade unions and the laws governing their structure and their actions by means of gender mainstreaming and positive action strategies.

This is in line with the newly amended Turkish Constitution. Article 10 of the Turkish Constitution states:

“All individuals are equal without any discrimination before the law, irrespective of... sex...

Men and women have equal rights. The State shall have the obligation **to ensure** that this equality exists **in practice**. Measures taken for this purpose shall not be interpreted as contrary to the principle of equality.”

This article represents a clear commitment to positive action, reaching beyond mere formal equality before the law, since the State **has the obligation to ensure** the envisaged equality **in practice**.

Moreover, gender mainstreaming is also embraced by Turkish Policy. The 2010 EU Commission Progress Report on Turkey mentions that “[a] Prime Ministerial circular was issued with the aim of promoting women's employment and equal opportunities, particularly on the labour market. The circular provides for establishment of a national board for monitoring and coordinating matters related to women's employment, for involvement of social partners and NGOs in the work of the board and for pursuit of gender equality and gender mainstreaming in drafting and implementing legislation and policies.”<sup>27</sup>

In this sense, the following evaluation of Turkish laws No. 2821 on Trade Unions, and No. 2822 on Collective Labour Agreements, Strikes and Lockouts will not primarily focus on single provisions, but instead examine the possibilities of trade unions to contribute to gender equality in a few problem areas (as outlined beneath), taking in mind opportunities for positive action as well as the implementation of gender mainstreaming. This is both consistent with approaches endorsed by the European Union, and with Turkish policy. It remains to stress that the specific propositions made in this report are tentative examples of policy choices, and by no means the only possible solutions for the respective problem areas. However, this *caveat* should not distract from the general recognition that a) trade unions and collective bargaining are paramount in gender equality endeavours; b) positive action measures are urgently needed to establish *de facto* equality; and c) gender mainstreaming should become a regular evaluation tool for decision makers on **all** levels of labour policy processes – for lawmakers, trade unionists, employers, etc. Therefore, proactive steps need to

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<sup>27</sup> Commission, ‘Turkey 2010 Progress Report: Enlargement Strategy and Main Challenges 2010-2011’ (Communication) COM (2010) 660, 25.

be taken in order to achieve gender equality as envisioned by the European Union, and as also as established by Turkish constitution and policy.

## 2.1. Framing the Problem

In Turkey, trade unions are notoriously weak;<sup>28</sup> in connection therewith, collective bargaining is not as effective a tool for bringing about social change (such as, e.g., women's empowerment) as it *could* be. They have limited budgets and are not considered influential; therefore, they cannot proactively make gender equality demands.<sup>29</sup> The 2010 EU Commission Progress Report on Turkey points out that although some commendable changes have been made in the area of social dialogue – such as “removing the ban on membership of more than one trade union at the same time and in the same branch of activity, and repealing the restriction to one collective agreement at the same workplace for the same time”<sup>30</sup> – much remains to be done, especially in the area of collective bargaining: “[T]he legal framework to which the Constitution refers in view of regulating the rights to negotiate, to organise collective actions for workers, employees and civil servants remains restrictive and needs to be brought into line with EU standards and ILO Conventions.”<sup>31</sup> However, such changes would require amendments of the Turkish Constitution, and thus cannot be brought about by adapting Turkish laws No. 2821 on Trade Unions, and No. 2822 on Collective Labour Agreements, Strikes and Lockouts alone.

Furthermore, as shown above, the general unionization rate is extremely low.<sup>32</sup> Most agricultural and service workers do not belong to unions.<sup>33</sup>

### 2.1.1. Precarious Work

The European Parliament highlights in its Resolution on precarious women workers (2010)<sup>34</sup> that women are usually more affected by precarious work than men. This fact is identified as a major reason for the persistence of the gender pay gap: “... the over-representation of women in precarious work is a key contributing factor to the gender pay gap, which remains at a persistent high level; whereas therefore improving job quality for women will reduce the gender pay gap...”<sup>35</sup> This means that in order to effectively remedy gender inequality structures, it is vital to tackle the problem of precarious work. In this sense, the resolution “[p]oints out the gendered nature of precarious employment and recalls the shift in the labour market from standard to non-standard types of employment, making it necessary to prevent non-standard types of employment becoming precarious work; considers that, in order to combat these problems, the Member States and social partners must be asked to align to a large extent their legislative and contractual rules on standard work and atypical work, so as to prevent the most convenient and least expensive forms of work from taking

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<sup>28</sup> ‘Human Resources and Trade Unions’, in Helen Chapin Metz (ed), *Turkey: A Country Study* (Washington: GPO for the Library of Congress 1995), available at <<http://countrystudies.us/turkey/54.htm>> accessed 11 March 2011.

<sup>29</sup> Nevin Senol, Ceren Isat, Ayson Sayin and Selma Acuner (eds), ‘Equal Opportunities for Women and Men in Turkey – Monitoring Law and Practice in Turkey’ (OSI/Network Women’s Program 2005) 15.

<sup>30</sup> Commission, ‘Turkey 2010 Progress Report: Enlargement Strategy and Main Challenges 2010-2011’ (Communication) COM (2010) 660, 69.

<sup>31</sup> *ibid.*

<sup>32</sup> See also Prime Ministry of Turkey - General Directorate on the Status of Women, *National Action Plan: Gender Equality 2008-2013* (Ankara 2008) 51ff; Gülay Toksöz, ‘Women’s Employment Situation in Turkey’ (ILO Country Report for the ILO Ankara Office, 2007) 94; and others.

<sup>33</sup> ‘Human Resources and Trade Unions’, in Helen Chapin Metz (ed), *Turkey: A Country Study* (Washington: GPO for the Library of Congress 1995), available at <<http://countrystudies.us/turkey/54.htm>> accessed 11 March 2011.

<sup>34</sup> “...women are over-represented in precarious employment on the labour market, whereas certain forms of precarious work performed by women, such as paid domestic work and care work, are invisible on the labour market, and whereas, despite the existing legislative framework, there continue to be major differences in the EU for women with regard to employment opportunities, quality of work, living income and equal pay for equal work and work of equal value...” EP Resolution INI/2010/2018 of 19 October 2010 on precarious women workers [2010], recital (B).

<sup>35</sup> *ibid* recital (C).

precedence, taking into account however the risks of a possible increase in undeclared work.”<sup>36</sup> Among other things, it calls on member states to “penalise the imposition of obstacles to trade union participation.”<sup>37</sup> In Turkey, more working women are affected by unregistered or precarious work than men (especially in the agricultural sector, but also in services or other sectors).<sup>38</sup> Recently, there have been approaches to introduce more flexible working conditions, which were also justified by concerns for gender equality – for instance, by giving women with child-care obligations the possibility to work part-time. However, as several reports point out, flexible work can only be an emancipatory strategy if it is introduced together with solid social security and fair wages;<sup>39</sup> otherwise, flexible jobs might degenerate into precarious jobs.<sup>40</sup>

A classic example of precarious work which is mostly done by women is domestic and home-based work. In a 2010 Working Paper on Domestic Work, the ILO stresses the need to recognize and deal with domestic work in an appropriate manner, qualifying it as a mainly female domain, and announcing the preparation of a new instrument meant to address domestic work.<sup>41</sup> It also mentions the role that trade unions could play in this respect.<sup>42</sup>

ILO Convention No. 177 deals with home-based work.<sup>43</sup> In Article 4, it states that “[t]he national policy on home work shall promote, as far as possible, equality of treatment between homeworkers and other wage earners, taking into account the special characteristics of home work and, where appropriate, conditions applicable to the same or a similar type of work carried out in an enterprise.”<sup>44</sup> It prominently features the right of home-based workers to organize, saying “[e]quality of treatment shall be promoted, in particular, in relation to: (a) the homeworkers’ right to establish or join organizations of their own choosing and to participate in the activities of such organizations; (b) protection against discrimination in employment and occupation; ...”<sup>45</sup> ILO Convention No. 189, which was recently adopted at the 100<sup>th</sup> Session of the International Labour Conference in June 2011, deals with domestic work. It also gives great importance to trade union representation and collective bargaining possibilities, stating in its Article 3: “Each Member shall, in relation to domestic workers, take the measures set out in this Convention to respect, promote and realize the fundamental principles and rights at work, namely: (a) freedom of association and the effective recognition of the right to collective bargaining ...”<sup>46</sup>

In Turkey, a “Working Group on Home-Based Female Workers” was established in 1999 by female researchers and activists.<sup>47</sup> It sought to contribute to the development of a national policy in line with ILO Convention No. 177, organizing local initiatives such as workshops, public policy forums, etc. However, this is not considered an official trade union with collective bargaining powers.<sup>48</sup> At the consultation with official institutions, social partners and NGOs on September 13<sup>th</sup> 2011 at the

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<sup>36</sup> *ibid* s 1.

<sup>37</sup> *ibid* s 8.

<sup>38</sup> See, eg, Gülay Toksöz, ‘Women’s Employment Situation in Turkey’ (ILO Country Report for the ILO Ankara Office, 2007) 43-44; Kadın Emegi ve Istihdami Girisimi (KEIG), ‘Women’s Labor and Employment in Turkey: Problem Areas and Policy Suggestions’ (KEIG Publishing 2nd edn. 2009) 12.

<sup>39</sup> Kadın Emegi ve Istihdami Girisimi (KEIG), ‘Women’s Labor and Employment in Turkey: Problem Areas and Policy Suggestions’ (KEIG Publishing 2nd edn. 2009) 21.

<sup>40</sup> The ITUC collected extensive material and case studies regarding this phenomenon. International Trade Union Confederation (ITUC), *Living with economic insecurity: women in precarious work* (ITUC 2011) 13, 22.

<sup>41</sup> Asha D’Souza for the ILO Bureau for Gender Equality, *Moving towards Decent work for Domestic workers: An Overview of the ILO’s work* (ILO Working paper 2/2010), vff.

<sup>42</sup> *ibid* 23.

<sup>43</sup> ILO Convention C177: Home Work Convention (adopted 20 June 1996, entered into force 22 April 2000) (83<sup>rd</sup> Conference Session Geneva 4 June 1996).

<sup>44</sup> *ibid*, art 4, para 1.

<sup>45</sup> *ibid*, art 4, para 2.

<sup>46</sup> ILO Convention C189: Convention concerning decent work for domestic workers (adopted 16 June 2011) (100<sup>th</sup> Conference Session Geneva 1 June 2011).

<sup>47</sup> Gülay Toksöz, ‘Women’s Employment Situation in Turkey’ (ILO Country Report for the ILO Ankara Office, 2007) 99.

<sup>48</sup> *ibid*.

Turkish Ministry of Labour and Social Security, a representative of the trade union umbrella organisation TÜRK-İS remarked that a domestic workers union had actually been established some months ago, even though they were not being very active at the moment. There were no details available as to their legal status, or whether they were officially recognized or not, or whether they could lead collective agreement negotiations (which is highly improbable, given the present legal situation).

### 2.1.2. Informal Work

One of the biggest problem areas for working women is informal work. “Grey economy jobs” have been identified as major obstacles to women’s equality on the labour market;<sup>49</sup> thus, any comprehensive gender equality strategy has to include the fight against informal work. While informal work is a general problem in Turkey, which was also widely noted by several representatives of NGOs and official institutions during the consultation with official institutions, social partners and NGOs on September 13<sup>th</sup> 2011, women in Turkey are disproportionately affected by informal work.<sup>50</sup> The majority of Turkish working women are employed in the informal sector,<sup>51</sup> for instance as unpaid family workers, in the services sector, or in agricultural jobs.<sup>52</sup> Unionization and collective bargaining could be valuable tools to fight unregistered employment;<sup>53</sup> however, informal workers are officially excluded from trade union representation.

### 2.1.3. Discriminatory Structures in Working Life

Discrimination based on gender, such as sexual harassment or other discrimination in the workplace (e.g., regarding job recruitment, the access to vocational training, or promotions) are important barriers for women’s advancement on the Turkish labour market.<sup>54</sup> According to the ILO, wage discrimination is one of the biggest problems for women in Turkey.<sup>55</sup> This is closely related to a segregated labour market: “The major heading under which discrimination in working life manifests itself fully is remuneration. While failure in observing the principle equal pay to equal work explains this situation partly, another reason may be the concentration of females in low-paid jobs as a result of gender-based division of labour.”<sup>56</sup> Another important obstacle for women is the famous glass ceiling, according to ILO reports: “Apparent under-representation of women in top level management positions is a clear indicator in both recruitment and promotion processes.”<sup>57</sup> Usually, underlying assumptions about traditional gender roles influence discriminatory behaviours. As pointed out by many reports, domestic duties and child-rearing are considered “women’s issues,”

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<sup>49</sup> See, eg, Turkey’s State Planning Organisation (SPO) and the World Bank, ‘Social and Economic Benefits of More and Better Job Opportunities for Women in Turkey’ available at <<http://go.worldbank.org/ZMBGRGALL0>> accessed 11 March 2011.

<sup>50</sup> Commission, ‘Turkey 2010 Progress Report: Enlargement Strategy and Main Challenges 2010-2011’ (Communication) COM (2010) 660, 71. See also: CEDAW Committee, ‘Concluding observations of the Committee on the Elimination of Discrimination against Women of its 46<sup>th</sup> Session: Turkey’, (12-30 July 2010) CEDAW/C/TUR/CO/6, para 33: “The Committee... recommends that the [Turkish] State party pay particular attention to the conditions of women workers in the informal sector and to unpaid family workers with a view to ensuring their access to social services and social security.”

<sup>51</sup> Gülay Toksöz, ‘Women’s Employment Situation in Turkey’ (ILO Country Report for the ILO Ankara Office, 2007) vii, 35: According to ILO, 66% of working women were employed in the informal sector in 2006.

<sup>52</sup> Kadın Emegi ve İstihdami Girişimi (KEİG), ‘Women’s Labor and Employment in Turkey: Problem Areas and Policy Suggestions’ (KEİG Publishing 2nd edn. 2009) 13.

<sup>53</sup> See, for instance, Prime Ministry of Turkey - General Directorate on the Status of Women, *National Action Plan: Gender Equality 2008-2013* (Ankara 2008) 38.

<sup>54</sup> See for a general overview: Gülay Toksöz, ‘Women’s Employment Situation in Turkey’ (ILO Country Report for the ILO Ankara Office, 2007).

<sup>55</sup> *ibid* 45.

<sup>56</sup> *ibid*.

<sup>57</sup> *ibid* 44.

whereas men are seen as “breadwinners.”<sup>58</sup> In order not to strengthen traditional assumptions about women’s capabilities, it would be advisable to not only focus on typical “women’s professions” (such as care-work, social work, handicraft, etc.) when devising programs intended to increase women’s labour market participation, but to also encourage women to cross over into typical male domains, in order to lessen the job market segregation.

Apart from discrimination, duties at home (especially child care obligations) seem to be major deterrents for women’s advancement.<sup>59</sup> Once women get children, they often stay at home for good – especially in urban areas – which explains the high number of unemployed, but relatively well educated women.<sup>60</sup>

Unionization of women might mitigate some of these problems, since trade unions can support women in terms of career planning by offering (legal) advice, targeted vocational trainings, or by providing or negotiating for child-care possibilities. Apart from that, they could represent women’s interests both in collective bargaining processes and tripartite negotiations, as well as assisting women workers in labour conflicts. However, the low number of female trade union members, and the absence of gender equality agendas in most trade unions, seems to prevent such actions.<sup>61</sup> The weak position of Turkish unions in general also has the effect of depriving women from vital allies in their struggle for equality. In the Recast Directive 2006, the European Union has recognized the important role that unions can play to implement gender equality at the workplace.<sup>62</sup>

#### **2.1.4. Internal Aspects: Male Dominated Structures of Trade Unions**

Although there are a few programs meant to increase women participation – such as the “Female Labour Platform” organized in 2005 by the Women’s Bureau of TÜRK-İS (Confederation of Trade Unions of Turkey)<sup>63</sup> – inequality structures are still prevailing.<sup>64</sup> There is low problem-awareness among unions regarding this issue, and as an effect, there are few to none strategies to address gender equality.<sup>65</sup> During meetings with representatives of Workers’ Unions (HAKİS) and Employers’ Unions (TİSK), both sides related that existing women committees were not very functional.<sup>66</sup>

### **2.2. Turkish Laws No. 2821 and No. 2822 in Context**

The following part will examine the gender equality potential within the scope of application of **Trade Unions Act, No. 2821, dated 5<sup>th</sup> of May 1983** (*in the following: Trade Unions Act*); and the **Collective Labour Agreement, Strike and Lock-Out Act, No. 2822, dated 5<sup>th</sup> of May 1983** (*in the following: Collective Agreement Act*).

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<sup>58</sup> *ibid* 14; World Bank, ‘Female Labor Force Participation in Turkey’ (November 23 2009), Report No. 58508-TR, 20; Kadın Emegi ve İstihdami Girişimi (KEİG), ‘Women’s Labor and Employment in Turkey: Problem Areas and Policy Suggestions’ (KEİG Publishing 2nd edn. 2009) 7-8; Interview with Julide Sarieroglu, Head of the Women’s Committee, HAKİS (Ankara, Turkey, 21 October 2010). Interview with Hilal Derici and Ulas Yildiz, TİSK (Ankara, Turkey, 21 October 2010); Interview with Julide Sarieroglu, Head of the Women’s Committee, HAKİS (Ankara, Turkey, 21 October 2010). Interview with Hilal Derici and Ulas Yildiz, TİSK (Ankara, Turkey, 21 October 2010); and others.

<sup>59</sup> Gülay Toksöz, ‘Women’s Employment Situation in Turkey’ (ILO Country Report for the ILO Ankara Office, 2007) 24.

<sup>60</sup> *ibid* 23-24.

<sup>61</sup> See, eg, Prime Ministry of Turkey - General Directorate on the Status of Women, *National Action Plan: Gender Equality 2008-2013* (Ankara 2008) 51ff; Gülay Toksöz, ‘Women’s Employment Situation in Turkey’ (ILO Country Report for the ILO Ankara Office, 2007) 94.

<sup>62</sup> See, eg, art 21 of the Recast Directive.

<sup>63</sup> *ibid* 95.

<sup>64</sup> Kadın Emegi ve İstihdami Girişimi (KEİG), ‘Women’s Labor and Employment in Turkey: Problem Areas and Policy Suggestions’ (KEİG Publishing 2nd edn. 2009) 17.

<sup>65</sup> Interview with Julide Sarieroglu, Head of the Women’s Committee, HAKİS (Ankara, Turkey, 21 October 2010); Interview with Hilal Derici and Ulas Yildiz, TİSK (Ankara, Turkey, 21 October 2010).

<sup>66</sup> *ibid*; Interview with Julide Sarieroglu, Head of the Women’s Committee, HAKİS (Ankara, Turkey, 21 October 2010). Interview with Hilal Derici and Ulas Yildiz, TİSK (Ankara, Turkey, 21 October 2010).

## **2.2.1. Access to Trade Unions and Collective Bargaining Processes for Informal and Precarious Workers**

### **2.2.1.1. Status Quo**

First of all, the access to trade unions seems restricted according to Article 2 of the Trade Unions Act. It states that a worker under this Act shall be any person “working under a contract of employment,” any person

“who undertakes to do mainly manual work under a contract for transport, excluding the vehicle owner, or gives his work to a publisher under a publishing contract, on a professional basis, and any person who does professional or manual work in an undertaking by way of participation under an ordinary contract of partnership, on condition that such a contract is open to any other person fulfilling the same conditions, shall also be considered a worker under the meaning of this Act. The coverage of any person working under a contract of employment by the Act respecting the Retirement Fund of the Turkish Republic shall not be an obstacle for that person to be considered to be a worker.”

Article 20 of the Trade Unions Act states that “Any person who is a worker within the meaning of this Act and is over 16 years of age may join a workers’ trade union.”

These Articles show that trade unions are reserved for workers who have some kind of a work contract. When asked about this issue, the Turkish Twinning Partners responded that “contract” had to be understood in broad terms – an oral contract also counted as a contract. However, a merely oral contract might be an obstacle to join a trade union, since a worker would need to prove to be a worker under the Trade Unions Act. Additionally, the Turkish Twinning Partners made it clear that unregistered workers could not join a trade union at all – they would have to register in order to become a member. Thus, the only way for informal workers to be accepted into a trade union is to formalize their employment. Unfortunately, this choice is often not up to them; the very nature of informal work implies that the possibility of formal labour contracts is not available, and this is mostly not due to the worker’s will. This implies that to enter a *registered* occupation, an informal worker might require considerable support – which could, at least theoretically, be provided by trade unions.<sup>67</sup> Since women are especially at risk of informal work, supportive structures in this area would greatly benefit gender equality. However, the present legal situation does not seem to facilitate such efforts.

Article 12 of the Collective Agreement Act states that

“[t]he workers’ trade union representing at least 10 per cent of the workers engaged in a given branch of activity (excluding the branch of activity covering agriculture, forestry, hunting and fishing) and more than half of the workers employed in the establishment or each of the establishments to be covered by the collective labour agreement shall have power to conclude a collective labour agreement covering the establishment or the establishments in question. In the case of enterprise collective labour agreements, the establishments shall be considered as one whole unit in the calculation of more than half majority.”

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<sup>67</sup> Prime Ministry of Turkey - General Directorate on the Status of Women, *National Action Plan: Gender Equality 2008-2013* (Ankara 2008) 38; see also: David Kucera and Leanne Roncolato, ‘Informal employment: Two contested policy issues’ (2008) 147 Int’l Lab. Rev. 321, 343 on suggestions on how to organize informal workers.



Asked about this Article, the Turkish Twinning Partners explained that the exclusion of the branch of activity covering agriculture, forestry, hunting and fishing referred to an exclusion of the 10%-rule, *not to an exclusion of these professions from the possibility to conclude a collective labour agreement*. In other words, these professions do not need to pass the 10% hurdle before being allotted collective bargaining powers. Asked about why these professions were exempted from the 10%-mark, the Turkish Twinning Partners responded that it was very hard to collect reliable data in this area in order to establish which amount of workers would constitute 10% of all workers engaged in this branch. However, the Turkish Twinning Partners remarked that presently, a new draft law was being discussed which possibly might change the quota requirements of Article 12 of this Act. No details were available. At the consultation with official institutions, social partners and NGOs on September 13<sup>th</sup> 2011, it was confirmed again by representatives of the Department for Trade Unions at the Ministry of Labour and Social Security that in fact, these quota requirements were presently being discussed, since they had also encountered criticism for other than gender equality reasons by EU and ILO.

The quota provisions in Article 12 might make it very difficult for workers engaged in certain professions to negotiate collective agreements – especially for people employed under precarious working conditions. As established above, women are particularly at risk of being employed in precarious jobs. Domestic and home-based workers have almost no possibility to join a trade union, leave alone conduct collective agreement negotiations. When asked about the situation of domestic workers with regards to trade unions, the Turkish Twinning Partners responded that domestic workers could join a cleaning company, in which case they could potentially participate in trade unions. Otherwise – given they had a proper work contract – they might be able to join a trade union under the branch of “General Services” according to Article 60 of the Trade Unions Act. However, the 10% and 50% quotas of Article 12 of the Collective Agreement Act effectively prevent domestic workers from ever concluding collective agreements, since – according to the Turkish Twinning Partners – it would be close to impossible to collect the necessary data to establish whether these quotas were met. At the consultation with NGOs and Social Partners on September 13<sup>th</sup> 2011, however, a representative of the Department for Trade Unions at the Ministry of Labour and Social Security noted that presently, new comprehensive data was being collected regarding, among others, the unionisation of workers. He conceded that this data was not yet published, but that it would eventually be made available. It is possible that this data might show new conclusive information which could be of use in this context.

Moreover, a representative of the Ministry of Labour and Social Security pointed out that the establishment of a *specific trade union* for domestic workers was prohibited by law, since Art. 3 of the Trade Unions Act stated that trade unions could only be established by branch, not by profession. It is, of course, debatable whether home-based and/or domestic work should be considered a work branch or a profession. This issue might need some further discussion.

Summarizing, it is safe to say that workers in precarious jobs have high risks of being excluded from trade union participation; domestic and home-based workers are excluded with a very high probability. Informal workers are always excluded. Looking at the present situation, most working women in Turkey hold precarious or unregistered jobs. Thus, around 66% of working women<sup>68</sup> are *prima facie* excluded from participating in social dialogue and from being represented by trade unions. This calculation, however, does not even take into account women who have regular work-contracts, but who fail to fulfil the quotas established in Article 12 of the Collective Agreement Act. In other words: A large majority of women seems to be *legally excluded* from social dialogue.

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<sup>68</sup> Gülay Toksöz, ‘Women’s Employment Situation in Turkey’ (ILO Country Report for the ILO Ankara Office, 2007) vii, 35.

### 2.2.1.2. Suggestions

A first obstacle to women's ability to join trade unions is the narrow definition of "worker" under the Trade Unions Act. The EU definition of this term might be a good example of a more inclusive approach. In *Deborah Lawrie-Blum v Land Baden-Württemberg* (1986)<sup>69</sup> the ECJ held that

"worker" "must be defined in accordance with objective criteria which distinguish the employment relationship by reference to the rights and duties of the person concerned. The essential feature of an employment relationship is that a person performs services of some economic value for and under the direction of another person in return for which he receives remuneration. The sphere in which they are provided and the nature of the legal relationship between employee and employer are immaterial."<sup>70</sup>

This means that the actual contract that employee and employer have is of less importance than the actual relationship between them, even if it is not formalized. Such an inclusive definition would not *prima facie* exclude workers with no formal work contract. It would give trade unions the possibility to represent a much larger segment of working women.

However, even this open approach might exclude unpaid family workers – one of the most vulnerable groups among working women in Turkey<sup>71</sup> – since they usually do not receive regular pay for their services. Special strategies, tailored to specific regional situations, might be in place to reach these workers as well. There have already been some promising initiatives in this area (it should be mentioned, however, that the goal of these initiatives was not to include unpaid family workers in trade union representation, but rather, to formalize their employment).<sup>72</sup>

A second obstacle is created by the quotas enshrined in Article 12 of the Collective Agreement Act. They effectively prevent domestic or home-based workers (among others) from conducting collective agreement negotiations. The best solution would probably be to significantly reduce these quotas, or to abolish them altogether. If this is not possible, an exception for domestic and home-based workers, built after the example of the exception for workers engaged in the branch of activity covering agriculture, forestry, hunting and fishing, might be an alternative.

However, this report will not elaborate on this issue, since the Turkish Twinning Partners have announced that a draft law which might change these quotas is currently being discussed. No further details regarding the draft law were available.

Additionally, positive action measures to include and engage informal workers and workers in precarious jobs in social dialogue might be a considerable contribution to gender equality. This would be in line with EU policy, as for instance established by the 2010 European Parliament Resolution on precarious women workers:<sup>73</sup>

"The European Parliament...

1. Points out the gendered nature of precarious employment and recalls the shift in the labour market from standard to non-standard types of employment, making it necessary to prevent non-standard types of

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<sup>69</sup> Case C-66/85 *Deborah Lawrie-Blum v Land Baden-Württemberg* [1986] ECR 2121.

<sup>70</sup> *ibid.*

<sup>71</sup> CEDAW Committee, 'Concluding observations of the Committee on the Elimination of Discrimination against Women of its 46<sup>th</sup> Session: Turkey', (12-30 July 2010) CEDAW/C/TUR/CO/6, para 33, 34.

<sup>72</sup> Gülay Toksöz, 'Women's Employment Situation in Turkey' (ILO Country Report for the ILO Ankara Office, 2007) 97.

<sup>73</sup> EP Resolution INI/2010/2018 of 19 October 2010 on precarious women workers [2010].

employment becoming precarious work; considers that, in order to combat these problems, the Member States and social partners must be asked to align to a large extent their legislative and contractual rules on standard work and atypical work, so as to prevent the most convenient and least expensive forms of work from taking precedence, taking into account however the risks of a possible increase in undeclared work;

...

8. Underlines the need to provide women in precarious jobs with the option of protection of entitlements such as decent pay, maternity leave, fair and regular working hours and a non-discriminatory working environment, which are crucial for these women; calls on the Member States to penalise the imposition of obstacles to trade union participation and in general encourages the Member States, moreover, to provide low-threshold advisory services for women who cannot receive support from a works council, for example employees in private households; calls on the social partners to improve gender parity in their bodies at all levels;

...

#### Domestic workers

21. Calls on the Commission to encourage the Member States to exchange best practices and make full use of the co-financing opportunities offered by the Structural Funds, in particular the European Social Fund, to ensure broader access to affordable, quality childcare and elderly care facilities so that women are not forced to undertake these duties on an informal basis; stresses, in addition, the need to ensure that precarious domestic care jobs are transformed, wherever possible, into decent, long-term jobs;

22. Calls on the Commission to support the Member States in developing a campaign for a step-by-step transformation of precarious workers into regular workers; calls on the Commission to endorse a programme aiming to educate workers on the effects and impacts of precarious work, including on occupational safety and health;...”<sup>74</sup>

The ILO advocates social dialogue to tackle the issue of informal work.<sup>75</sup> For instance, the 2006 ILO Recommendation concerning the employment relationship<sup>76</sup> suggests to address the gender dimension of precarious employment by focusing on the sectors where women predominate and where there is a high proportion of ambiguous and disguised employment relationships.<sup>77</sup> The International Trade Union Confederation (ITUC) states in its report about Women in Precarious Work:

“Both governments and social partners, through the conclusion of collective agreements, can promote policies and measures to redress the growth of insecure work. But governments are primarily responsible to

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<sup>74</sup> *ibid.*

<sup>75</sup> David Kucera and Leanne Roncolato, ‘Informal employment: Two contested policy issues’ (2008) 147 *Int’l Lab. Rev.* 321, 343.

<sup>76</sup> ILO Recommendation R198: Employment Relationship Recommendation (95<sup>th</sup> Conference Session Geneva 31 May 2006).

<sup>77</sup> International Trade Union Confederation (ITUC), *Living with economic insecurity: women in precarious work* (ITUC 2011) 9, 16.

ensure workers are protected by labour laws and a recognized employment relationship. It is essential to extend the scope of the labour legislation to these female dominated categories of unprotected workers such as domestic, care, agricultural, home-based or part-time workers. Measures to help recognize the existence of an employment relationship and identify the employer are essential especially for workers involved in triangular employment relationships and the so-called false self-employed. The ILO Recommendation No 198 on the Employment Relationship provides very useful guidance in this regard. **The promotion of measures in national law that would remove the barriers to the realisation of trade unions and collective bargaining rights is crucial for all workers but particularly for those in labour intensive and high turnover sectors.** The extension of the scope of collective bargaining throughout the supply chain would ensure the protection of workers situated at lowest levels where informality prevails.”<sup>78</sup>

In order to achieve the best results for gender equality, it might be advisable to open and strengthen trade union structures, and to adapt the collective bargaining process to EU standards. Strategies to tackle informal and precarious work could be devised in close cooperation with the social partners. Fortunately, there already are several promising projects which could be built on, such as the “Pilot Project on Active Labour Market Policies for Advancing Gender Equality through Decent Employment for Women in Turkey” by the ILO Ankara Office in cooperation with IS-KUR.<sup>79</sup> The implementation of already existing strategies, such as the “National Action Plan for Gender Equality 2008-2013,”<sup>80</sup> as well as the ratification of international instruments, such as ILO Convention No. 177 on Home-Based Work<sup>81</sup> or the ILO Convention No. 189 on Domestic Work,<sup>82</sup> is also suggested.<sup>83</sup>

## 2.2.2. Fighting Discrimination Structures in Working Life

### 2.2.2.1. Status Quo

According to Hilal Derici and Ulas Yildiz, representatives of the Turkish employers’ organization TISK, there is no monitoring mechanism to assess the impact of specific programs aimed at increasing women’s participation in the labour market and in trade unions.<sup>84</sup> Julide Sarieroglu, representative of the trade union HAKIS, gave the same information.<sup>85</sup> Needs assessments, as well as impact evaluations, are therefore very difficult. HAKIS as well as TISK representatives mentioned that there were very few, if any, bodies in charge of tracking down relevant information.<sup>86</sup>

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<sup>78</sup> *ibid* 23.

<sup>79</sup> For more details, see: Özge Berber Agtas for the ILO Ankara Office, ‘Pilot Project on Active Labour Market Policies for Advancing Gender Equality through Decent Employment for Women in Turkey: Final Report’ (ILO Ankara Office, 2010).

<sup>80</sup> Prime Ministry of Turkey - General Directorate on the Status of Women, *National Action Plan: Gender Equality 2008-2013* (Ankara 2008).

<sup>81</sup> ILO Convention C177: Home Work Convention (adopted 20 June 1996, entered into force 22 April 2000) (83<sup>rd</sup> Conference Session Geneva 4 June 1996).

<sup>82</sup> ILO Convention C189: Convention concerning decent work for domestic workers (adopted 16 June 2011) (100<sup>th</sup> Conference Session Geneva 1 June 2011).

<sup>83</sup> To propose specific policies would a) go beyond the scope of this report, and b) be out of place, since the EU installs an equality framework and gender equality goals, but (with few exceptions) does not prescribe the concrete policies that have to be taken.

<sup>84</sup> Interview with Julide Sarieroglu, Head of the Women’s Committee, HAKIS (Ankara, Turkey, 21 October 2010).

Interview with Hilal Derici and Ulas Yildiz, TISK (Ankara, Turkey, 21 October 2010).

<sup>85</sup> Interview with Julide Sarieroglu, Head of the Women’s Committee, HAKIS (Ankara, Turkey, 21 October 2010).

Interview with Hilal Derici and Ulas Yildiz, TISK (Ankara, Turkey, 21 October 2010).

<sup>86</sup> Interview with Julide Sarieroglu, Head of the Women’s Committee, HAKIS (Ankara, Turkey, 21 October 2010).

Another problem, according to Julide Sarieroglu of HAKIS, seems to be the lack of effective judicial proceedings in cases of (sexual) harassment.<sup>87</sup> TISK representatives explained that there were less than 10 cases decided in these charges in the 9th district court.<sup>88</sup> Both organizations' representatives mentioned traditional structures and the shame involved in bringing forward such claims as one possible reason for this phenomenon.<sup>89</sup>

The need for adequate judicial proceedings is, however, prescribed (among others) by Article 18 of the Recast Directive 2006. A possible solution could be the introduction of anonymous complaints mechanisms, or the establishment of a trade union ombudsperson, who could be a first contact point for harassed women; there, they could get information and support without exposing themselves at once.

Neither the Trade Unions Act, nor the Collective Agreement Act, provides for any gender equality measures. Although it is true that such measures would have to be devised and supported to a large extent by the trade unions themselves, the legal framework has to allow for the design of such measures. Additionally, Member States are called upon to actively encourage activities which promote equality between men and women,

This is shown in the Recast Directive 2006. First of all, it requires Member States to enable and ensure the quality of social dialogue: “**Member States shall... take adequate measures to promote social dialogue** between the social partner with a view to fostering social equality treatment...” (Recast Directive 2006, Article 21 (1)). Secondly, “**Member States shall encourage the social partners... to promote equality** between men and women...” (Recast Directive 2006, Article 21(2)). Thirdly, “**Member States shall... encourage employers to promote equal treatment** between men and women...” (Recast Directive 2006, Article 21(3)); and finally, “**...employers shall be encouraged to provide... employees and/or their representations with appropriate information on equal treatment** for men and women in the undertaking.” (Recast Directive 2006, Article 21(4)). Article 23 of the Recast Directive 2006 explicitly demands of Member States to take “all necessary measures to ensure that: a) any laws, regulations and administrative provisions contrary to the principle of equal treatment are abolished; b) provisions contrary to the principle of equal treatment in individual or collective contracts or agreements, internal rules of undertakings or rules governing the independent occupations and professions and workers' and employers' organisations... shall be, or may be, declared null and void or are amended...”

Additionally, Article 10 of the Turkish Constitution and the Circular of the Prime Minister regarding gender mainstreaming,<sup>90</sup> as well as the European Union, endorse positive action measures and gender mainstreaming to achieve equality between the sexes.<sup>91</sup>

Hence, there is a wide range of possible actions. Importantly, trade unions could

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Interview with Hilal Derici and Ulas Yildiz, TISK (Ankara, Turkey, 21 October 2010); Interview with Julide Sarieroglu, Head of the Women's Committee, HAKIS (Ankara, Turkey, 21 October 2010). Interview with Hilal Derici and Ulas Yildiz, TISK (Ankara, Turkey, 21 October 2010).

<sup>87</sup> Interview with Julide Sarieroglu, Head of the Women's Committee, HAKIS (Ankara, Turkey, 21 October 2010). Interview with Hilal Derici and Ulas Yildiz, TISK (Ankara, Turkey, 21 October 2010).

<sup>88</sup> Interview with Julide Sarieroglu, Head of the Women's Committee, HAKIS (Ankara, Turkey, 21 October 2010). Interview with Hilal Derici and Ulas Yildiz, TISK (Ankara, Turkey, 21 October 2010).

<sup>89</sup> Interview with Julide Sarieroglu, Head of the Women's Committee, HAKIS (Ankara, Turkey, 21 October 2010). Interview with Hilal Derici and Ulas Yildiz, TISK (Ankara, Turkey, 21 October 2010); Interview with Julide Sarieroglu, Head of the Women's Committee, HAKIS (Ankara, Turkey, 21 October 2010). Interview with Hilal Derici and Ulas Yildiz, TISK (Ankara, Turkey, 21 October 2010).

<sup>90</sup> Commission, 'Turkey 2010 Progress Report: Enlargement Strategy and Main Challenges 2010-2011' (Communication) COM (2010) 660, 25.

<sup>91</sup> See chapter 3 of this report.

a) collect relevant data in terms of equal treatment between men and women within an undertaking or a branch of activity (such as: average pay and pay differentials, data on workplace segregation,<sup>92</sup> etc. The collection of information is especially relevant for gender mainstreaming according to Article 29 of the Recast Directive 2006. This is also in accordance with Article 21(1) and (4) Recast Directive 2006;

b) recognize the need for certain equality programs, help devise them, and monitor their implementation (for instance, according to Article 21(1) Recast Directive 2006);

c) provide workers with information about the rights of women (for instance, according to Article 21(4) and Article 30 Recast Directive 2006);

d) include gender equality agendas in their activities on all levels, be it during collective bargaining, the design of internal policies, or the offering of programs and trainings (for instance, according to Article 21(1) and (2) Recast Directive 2006);

e) offer vocational trainings and other programs meant to increase women's participation in the labour market, women's career development, women's access to jobs and promotions, women's participation in decision-making on all levels of the labour process; and generally raise awareness in favour of gender equality. At least some of these activities should target men, since it is impossible to achieve *de facto* equality without the support of the male working population. The activities addressed to male workers could particularly cover the issues of shared domestic and child-care obligations, since these home-bound duties have been identified as one major deterrent for women to work.<sup>93</sup> This would be in line with Article 21 (1), (2) and (3) of the Recast Directive 2006;

f) build anti-discrimination and support structures, such as an ombudsperson or other (local) entity for women who have been discriminated against, harassed or sexually harassed by their superiors or co-workers. This person or entity should (among other things) give legal advice on how to proceed if such an event has taken place; devise instruments to facilitate anonymous complaints; and be endowed with the necessary competences and rights to act independently and effectively. In working populations who work under a collective agreement, these functions could be carried out by a special shop-steward. This would be in accordance with Article 21 (1), (2) and (3), as well as Article 18 of the Recast Directive 2006;

g) negotiate for or offer crèches and other child-care facilities (according to Article 21 (1), (2) and (3) of the Recast Directive 2006), and negotiate or implement (where it lies within their competence) parental leave arrangements in accordance with Recital (15) of Directive 2010/18/EU and Clause 5, Section 3 of the Framework on Parental Leave, 18 June 2009 (Annex to Directive 2010/18/EU).

#### **2.2.2.2.Suggestions**

Article 7 of the Trade Unions Act prescribes certain elements to be included in the statutes of trade unions. This would be the perfect place to prescribe minimum standards which trade unions should adhere to. Generally, a commitment to gender equality could be mentioned here, such as the consideration of gender equality in the trade union's activities on all levels, be it during collective bargaining, the design of internal policies, or the offering of programs and trainings. This paragraph could also include an instruction to indicate a framework for anti-discrimination and equality

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<sup>92</sup> Workplace segregation is one of the major obstacles to gender equality on the labour market in Turkey. See, eg, Gülay Toksöz, 'Women's Employment Situation in Turkey' (ILO Country Report for the ILO Ankara Office, 2007) 32.

<sup>93</sup> Just one example out of the plethora of different reports which point to the same phenomenon: World Bank, 'Female Labor Force Participation in Turkey' (November 23 2009), Report No. 58508-TR, 24ff.

measures, and instruments of data collection to facilitate gender mainstreaming according to Article 29 of the Recast Directive 2006, as well as procedures for the dissemination of information according to Article 30 of the same Directive.

Article 9 of the Trade Unions Act contains provisions about the mandatory organs of a trade union. In this section, a special ombudsperson or other entity for women who have been discriminated against, harassed or sexually harassed by their superiors or co-workers, could be installed. Some of the competencies of this ombudsperson, women's committee and/or other entity could include: a) *ex ante* examinations of discrimination claims brought forward against co-workers or the employer; b) providing information and assistance for victims of harassment and sexual harassment; c) supporting and advising women employees regarding their career; d) the design of instruments to facilitate anonymous complaints; e) representing women's interests in general. This person or entity should be endowed with the necessary competences and rights to act independently and effectively.

Article 32 of the Trade Unions Act regarding the activities of the union in terms of labour relations could include the representation of women (as plaintiff or defendant, or in another capacity) in matters arising out of discrimination or (sexual) harassment claims.

Article 33 of the Trade Unions Act, regulating the social activities of unions and confederations, could include explicit references to the following activities: a) vocational trainings and other programs meant to increase women's participation in the labour market, women's career development, women's access to jobs and promotions, women's participation in decision-making on all levels of the labour process; and generally raise awareness in favour of gender equality, as well as activities targeting men, particularly covering the issues of shared domestic and child-care obligations; b) offer crèches or other child-care facilities; c) collect relevant data in terms of equal treatment between men and women within an undertaking or a branch of activity (such as: average pay and pay differentials, data on workplace segregation, etc, which is a basis for gender mainstreaming measures according to Article 29 of the Recast Directive 2006; d) provide employees with information about the rights of women.

Article 34 and 35 of the Trade Unions Act regulate the appointment of, conditions concerning and functions of shop stewards. Generally, some of the tasks and functions mentioned above (especially regarding the dissemination of information, or the monitoring and support in cases of discrimination) could be carried out by a special shop steward, dedicated to further women's equality in an undertaking. However, shop stewards can only be appointed by trade unions "whose competence to conclude the collective labour agreement is certified" (Article 34 Trade Unions Act). The Turkish Twinning Partners confirmed that only unions with this specific competence could appoint shop stewards. Thus, there would need to be an alternative solution for the case that trade unions do not fulfil this condition.

Articles 2 to 5 of the Collective Agreement Act contain provisions about the content, scope, etc. of collective labour agreements. This might be the perfect place to include a commitment to and a consideration of gender equality measures when negotiating collective agreements, especially regarding crèches or child-care facilities (according to Article 21 (1), (2) and (3) of the Recast Directive 2006) and parental leave arrangements in accordance with Directive 2010/18/EU and the Framework on Parental Leave, 18 June 2009 (Annex to Dir. 2010/18/EU).

At the consultation with official institutions, social partners and NGOs on September 13<sup>th</sup>2011, a number of representatives – mainly from official institutions – stated that the present law presented no obstacle for the introduction of some of the above-mentioned initiatives. While it is true that some of these measures could be taken already within the scope of the present legal situation, they are, as

of today, not mandatory, and the law does not provide any incentives to introduce such measures. Since the European Union calls on its Member States to take a rather pro-active approach when it comes to gender equality, some legal impulses might be in place.

### **2.2.3. Increasing Female Participation in Trade Unions**

#### **2.2.3.1. Status Quo**

As established above, Turkish trade unions are to a large extent male territory. Although there are some programs to increase female participation, their impact seems limited.<sup>94</sup> However, there is no doubt that poor female representation in unions will lead to less effective representation of women's interests on all levels. The 2008-2013 Turkish National Action Plan for Gender Equality remarks: "Although some unions have established women's secretariats, platforms, committees, and desks at the executive echelons,... most of these unions need to form units for incorporating the gender equality perspective. Generalizing, strengthening, and optimising the women's committees and platforms at trade unions and confederations that have quite a strong and widespread organisation at country level would greatly contribute [to gender equality]... In addition, initiatives increasing the participation of women in the union movement should be supported in order to improve institutionalisation at the union level."<sup>95</sup>

Article 14(1)(d) of the Recast Directive 2006 expressly includes trade unions in its scope. Therefore, discriminatory structures *within* trade unions are prohibited by the Directive. The achievement of factual gender equality thus also applies to unions.

Practical impediments which bar women from participation in trade unions could be (among others): a) socio-cultural stereotypes about women's "proper" role,<sup>96</sup> leading *inter alia* to low self-esteem of women and a lack of trust in their own abilities; b) a conservative union culture with informal male networks,<sup>97</sup> and limited to no problem-awareness of male members; c) disproportionate burden of family responsibilities<sup>98</sup> (which could lead to not only a double, but a triple burden for women: family obligations, work obligations, and union obligations); d) the famous "glass ceiling;"<sup>99</sup> e) lack of information about unions and participation possibilities; and f) due to all of the above, very low attractiveness of unions for women, to just name a few factors.

For a more in-depth analysis of the obstacles that women have to face in trade unions, a thorough evaluation of trade unions' practices and customs regarding gender equality would be necessary. However, in an interview conducted in October 2010 with Ms. Julide Sarieroglu of HAKIS, she named the following elements as major impediments for women's trade union participation:

- women are not really informed about trade unions (not even about the most basic functions or the structure of trade unions);
- disproportionate workload (additional child care or elderly care obligations, etc.);
- male-domination of unions: many male members are not interested in female members; however, in the view of the interview partner, it is the responsibility of the trade union to

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<sup>94</sup> Gülay Toksöz, 'Women's Employment Situation in Turkey' (ILO Country Report for the ILO Ankara Office, 2007) 95.

<sup>95</sup> Prime Ministry of Turkey - General Directorate on the Status of Women, *National Action Plan: Gender Equality 2008-2013* (Ankara 2008) 23.

<sup>96</sup> Anne Trebilcock, 'Strategies for strengthening women's participation in trade union leadership' (1991) 130 *Int'l Lab. Rev.* 407, 410.

<sup>97</sup> Jane Pillinger for the European Trade Union Confederation (ETUC), 'From Membership to Leadership: Advancing women in trade unions' (ETUC 2010), 17.

<sup>98</sup> Anne Trebilcock, 'Strategies for strengthening women's participation in trade union leadership' (1991) 130 *Int'l Lab. Rev.* 407, 410.

<sup>99</sup> Jane Pillinger for the European Trade Union Confederation (ETUC), 'From Membership to Leadership: Advancing women in trade unions' (ETUC 2010), 19.



reach out to male as well as female members, to raise awareness and to find ways for female members to participate;

- collective agreements and collective bargaining procedures: there often is no inclusion of specific provisions regarding women; gender equality is often not even remotely an issue in collective agreement negotiations;
- since trade unions have to fight for their mere existence, there is not much room for or interest in women's issues.<sup>100</sup>

There is a plethora of best practice examples on how to increase female trade union membership, and how to include women in union leadership. Of course, the specific measures taken depend on the specific situation. However, to just mention a few examples, mentioned in the evaluation report conducted by the EU Social Partners' Framework of Actions on Gender Equality in 2009:

<sup>101</sup>

“The evaluation report provides examples of strategies put in place by the social partners to improve the representation of women in decision-making, including:

- Monitoring the representation and participation of women within their organisations (UK, Portugal, Iceland, Denmark);
- Putting in place specific training or mentoring programmes, such as leadership courses to attract and develop more women in leadership roles (Poland, UK);
- Conducting surveys amongst female top and middle management executives to see how they reconcile their professional and private commitments (Norway);
- Promoting women's careers in managerial positions (Finland);
- Awards to promote those companies that have increased the numbers of women in managerial positions (Austria, Czech Republic, The Netherlands, Slovenia);
- Establishing networks, or ambassadors of women in top leading positions of private companies (Denmark, Finland).
- Cross-industry agreements on gender representation (Italy, Spain);
- A Charter on Gender mainstreaming signed by crossindustry trade unions (Belgium);
- Programmes for increasing the number of women in leadership positions in the Central government sector (Sweden);...”<sup>102</sup>

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<sup>100</sup> Interview with Julide Sariroglu, Head of the Women's Committee, HAKIS (Ankara, Turkey, 21 October 2010).

Interview with Hilal Deric and Ulas Yildiz, TISK (Ankara, Turkey, 21 October 2010).

<sup>101</sup> ETUC/CES, BUSINESSEURPE/UEAPME and CEEP, 'Framework of Actions on Gender Equality: Evaluation report 2009' available at

<[http://www.etuc.org/IMG/pdf\\_Final\\_Evaluation\\_Report\\_Framework\\_of\\_Actions\\_on\\_gender\\_equality\\_2009\\_EN.pdf](http://www.etuc.org/IMG/pdf_Final_Evaluation_Report_Framework_of_Actions_on_gender_equality_2009_EN.pdf)> accessed 11 March 2011.

<sup>102</sup> Jane Pillinger for the European Trade Union Confederation (ETUC), 'From Membership to Leadership: Advancing women in trade unions' (ETUC 2010), 16.

The ETUC relates the case of an Italian union – the CGIL – who managed to achieve a 50% participation rate of women by adopting, among others, the following measures:

“• [The] implement[ation of] policies on equality between women and men by promoting equality in labour market policies, a gender analysis of the organisation of work, welfare and services, and the elimination the gender pay gap.

• [The] improve[ment of] the representation of women in the union by implementing the anti-discrimination rule, measures for women to enter management, training for women, quotas for women at all levels including at the grass roots level and limits on the list for elections of joint union representatives in the workplace. The implementation and the monitoring of the 40/60 rule on the representation of women is a key political priority and a mandatory requirement.

• [The] improve[ment of] working time policies to enable women and to participate equally and effectively in union meetings through a CGIL working time policy and attention to improving the timing and effectiveness of meetings. As a result of these measures CGIL has been successful in improving the gender balance in decisionmaking bodies, from 33% in 1996 to 40% in 2010.”<sup>103</sup>

Of course, these strategies require full cooperation and enthusiasm by trade unions, as many of these measures have to be carried out by them. However, the legal framework governing trade unions has to permit the adoption of these measures.

### 2.2.3.2. Suggestions

Articles 9 to 11 and 15 to 17 of the Trade Unions Act deal with the composition and function of the organs of trade unions. This might be the perfect place

- a) to introduce a specific organ (such as a women’s committee) in charge of monitoring, promoting and implementing women’s rights, creating and implementing gender equality programs and trainings, and to increase female participation in decision making processes. This organ would have to be endowed with certain powers and competences in order to ensure its efficacy;
- b) to introduce a women’s representative on the management committee, the board of auditors and/or the disciplinary board, in charge of representing women’s interests in the union;
- c) to introduce an entity to receive and examine (anonymously, if needed) discrimination claims against other union Members (for instance, located in the disciplinary board);
- d) to reserve a certain number of seats in the management committee and the boards for female members.<sup>104</sup>

Again, at the consultation with official institutions, social partners and NGOs on September 13<sup>th</sup>2011, a number of representatives stated that the present law presented no obstacle for the

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<sup>103</sup> *ibid* 22.

<sup>104</sup> This is also in accordance with demands made by the Prime Ministry of Turkey - General Directorate on the Status of Women, *National Action Plan: Gender Equality 2008-2013* (Ankara 2008) 52, and the Kadın Emegi ve Istihdami Girisimi (KEIG), ‘Women’s Labor and Employment in Turkey: Problem Areas and Policy Suggestions’ (KEIG Publishing 2nd edn. 2009) 28-30.

introduction of some of the above-mentioned initiatives. While it is true that some of these measures could be taken already within the scope of the present legal situation, they are, as of today, not mandatory, and the law does not provide any incentives for trade unions to introduce such measures. Since the European Union calls on its Member States to take a rather pro-active approach when it comes to gender equality, some legal impulses might be in place.

Article 24 of the Trade Unions Act, regulating the continuation or suspension of membership, holds that union members can keep their membership under certain conditions if becoming temporarily unemployed, accepting other employment, etc. This Article could also contain a provision which expressly lists the cases of pregnancy, maternity leave or parental leave, or leave of work due to child care obligations, as reasons to maintain the union membership, even if active work has to be (temporarily) suspended.

Article 31 of the Trade Unions Act allows an employee to carry out trade union activities either “outside his hours of work, or during hours of work with the employer’s permission.” This might be a strong deterrent for women to participate, since as shown above, they have a larger amount of obligations at home than men (such as child-care, housework, etc.). If an employer refuses his permission for employees to participate in trade union activities during work hours, it might be impossible for a woman to participate at all, since she might not be able to stay after work due to her home-bound obligations.

When thinking about changing this provision, it might be advisable not to just introduce a special provision for women only (e.g., allocating a certain time for female union members in which they can participate in union activities during working hours – but without expanding this time allocation to male members, as well). A special provision just for women might turn out to be a liability for women when looking for a job, rather than an opportunity, since employers might be more reluctant to hire women if they know they might potentially have to grant them time off-work to follow union activities. Thus, it is advisable to change this provision for *all* union members. This could happen, for instance, by allotting a certain amount of working-time for *all* union Members in which they can carry out union activities.

Division 2 of the Trade Unions Act (covering Articles 37 to 39) contains certain prohibited activities. It might be worth considering to include in this Division: direct and indirect discrimination, harassment, and sexual harassment in the definitions of Article 2 of the Recast Directive 2006.

Article 2 of the Recast Directive 2006 defines these terms as follows:

“1. For the purposes of this Directive, the following definitions shall apply:

(a) ‘direct discrimination’: where one person is treated less favourably on grounds of sex than another is, has been or would be treated in a comparable situation;

(b) ‘indirect discrimination’: where an apparently neutral provision, criterion or practice would put persons of one sex at a particular disadvantage compared with persons of the other sex, unless that

provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary;

(c) ‘harassment’: where unwanted conduct related to the sex of a person occurs with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment;

(d) ‘sexual harassment’: where any form of unwanted verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment;

...

2. For the purposes of this Directive, discrimination includes

(a) harassment and sexual harassment, as well as any less favourable treatment based on a person’s rejection of or submission to such conduct;

(b) instruction to discriminate against persons on grounds of sex;

(c) any less favourable treatment of a woman related to pregnancy or maternity leave within the meaning of Directive 92/85/EEC.”

However, should a comprehensive Anti-Discrimination law be passed which contains these definitions as put forward by the Recast Directive 2006 (especially regarding direct discrimination, indirect discrimination, harassment and sexual harassment), the introduction of respective provisions in Division 2 of the Trade Unions Act might not be necessary.

Generally, it might be advisable to include some binding provisions in the Trade Unions Act which address the *de facto* situation of women, making it easier for them to participate in trade unions, such as:

- introducing a provision that official board meetings, management committee meetings or meetings of the general congress should not be held after 5 p.m., so that women with child-care obligations can participate;
- awarding unions which manage to achieve a certain women Membership quota by a given date;
- introducing gender mainstreaming bodies to monitor, evaluate and analyse (in terms of a needs-analysis) the trade union participation of women.

For more information about best practice examples in this respect, the homepages of the ITUC<sup>105</sup> and the ETUC<sup>106</sup> can provide valuable information. Additionally, the HAKIS was very successful in implementing gender equality measures, raising their female membership considerably in the last years and introducing creative and effective programs, such as awareness raising trainings for men,

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<sup>105</sup> European Trade Union Confederation (ETUC) <<http://www.etuc.org/>> accessed 11 March 2011.

<sup>106</sup> International Trade Union Confederation (ITUC CSI IGB) <<http://www.ituc-csi.org/>> accessed 11 March 2011.

outreach strategies to recruit female members, etc.<sup>107</sup> The head of the women's committee at HAKIS, Ms. Julide Sarieroglu, stated that HAKIS would be happy to share its experience in this area and to cooperate with other trade unions on this matter.

### 3. Summary

#### 3.1. Summary of Argument

Female participation in the Turkish labour market is considerably beneath global and European average, but it follows a worldwide trend of rising labour market participation of women. In May 2011 it amounted to slightly less than 30% (29,8).<sup>108</sup> Gender inequality and high female unemployment are major obstacles to economic development.<sup>109</sup> Presently, Turkey's economy is growing; nonetheless, one might only speculate as to the impressive results which an exploration of the vast potential of Turkey's female labour force might achieve.<sup>110</sup>

Social dialogue and a strong workers' representation play a vital role to achieve gender equality in the workplace. In its Action Plan for Gender Equality 2010-15, the ILO pointed out that "social dialogue and tripartism are essential policy tools to advance gender equality in the world of work at international, regional, national, community and enterprise levels."<sup>111</sup> The less effective trade unions are (in terms of workers' protection, collective bargaining power, etc.), the less they can be active agents to protect the more vulnerable groups in a society. However, strong trade unions can be (and have been) a major actor in promoting gender equality within a company or a sector.<sup>112</sup> For instance, the work-family-life-balance is one of the major challenges that women in the labour market face.<sup>113</sup> Trade unions are one of the major agents to promote change in this area, as Directive 2010/41 on equal treatment for the self-employed recognizes in Recital (15),<sup>114</sup> since they work with women on all employment levels and thus have a profound knowledge of needs and gaps. Furthermore, they are actively involved in collective agreement bargaining processes, therefore negotiating the very conditions which majorly influence the word-family-life-balance. Moreover, they would be the perfect institutions to point out gender inequalities in a workplace, to propose adequate solutions and to monitor the long-term impact of respective programs.

The internal constitution of trade unions is also of major importance for gender equality. If an organization seeks to effectively promote equal labour standards, it needs to attract and promote women in its own ranks, as well. Turkish trade unions have extremely few female members.<sup>115</sup>

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<sup>107</sup> Interview with Julide Sarieroglu, Head of the Women's Committee, HAKIS (Ankara, Turkey, 21 October 2010).

Interview with Hilal Derici and Ulas Yildiz, TISK (Ankara, Turkey, 21 October 2010).

<sup>108</sup> TurkStat, press release no. 168, date 15<sup>th</sup> August 2011.

<sup>109</sup> World Bank, *Engendering Development: Through Gender Equality in Rights, Resources, and Voice* (World Bank / Oxford University Press, January 2001), 73ff.

<sup>110</sup> See, eg, World Bank, 'Turkey's Greatest Untapped Potential? Women' available at <<http://go.worldbank.org/ZMBGRGALL0>> accessed 11 March 2011.

<sup>111</sup> International Labour Organization, *ILO Action Plan for Gender Equality 2010-15* (Geneva 2010) 54.

<sup>112</sup> Gülay Toksöz, 'Women's Employment Situation in Turkey' (ILO Country Report for the ILO Ankara Office, 2007) ix.

<sup>113</sup> Interview with Julide Sarieroglu, Head of the Women's Committee, HAKIS (Ankara, Turkey, 21 October 2010).

Interview with Hilal Derici and Ulas Yildiz, TISK (Ankara, Turkey, 21 October 2010).

<sup>114</sup> Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC [2010] OJ L180/1, recital (15).

<sup>115</sup> See, eg, Prime Ministry of Turkey - General Directorate on the Status of Women, *National Action Plan: Gender Equality 2008-2013* (Ankara 2008) 51ff; Gülay Toksöz, 'Women's Employment Situation in Turkey' (ILO Country Report for the ILO Ankara Office, 2007) 94; and others.

Several trade union organizations, such as the ETUC or the ITUC, have repeatedly stressed the importance of equality structures in trade unions.<sup>116</sup>

The European Union has recognized the paramount importance of trade unions and collective bargaining for promoting gender equality in working life.<sup>117</sup>

Equality between men and women is considered a general principle of EU law.<sup>118</sup> The European Court of Justice has supported this view in its jurisprudence.<sup>119</sup> It is important to note that the EU commits itself to actively install gender equality. It is not satisfied to simply call for the abolition of discriminatory laws, but goes further by trying to establish *de facto* equality.

This report focused on the following main problem areas concerning trade unions in Turkey: precarious and informal work, discrimination structures in working life and male-dominated structures of trade unions.

### **3.2. Summary of Relevant EU Policy Instruments**

#### **3.2.1. EU Fundamentals of Positive Action and Gender Mainstreaming**

“Positive action” is a broad concept, including a plethora of different strategies which go beyond formal equality of men and women before the law. “Mainstreaming” is an approach which seeks to include equality considerations in all areas of law and policy.<sup>120</sup> The following EU policy instruments contain relevant provisions concerning positive action and gender mainstreaming (caveat: this is not an exhaustive list!).

##### **3.2.1.1. Treaties**

The Treaties of the European Unions make it clear that the factual elimination of discrimination against women is paramount in European politics.

Art. 2 TEU – commitment to equality between men and women

Art. 3 TEU – Union shall promote equality between men and women

Art. 8 TFEU – in all its activities, Union shall aim to eliminate inequalities and promote equality

Art. 9 TFEU – fight against social exclusion

Art. 10 TFEU – combat against discrimination

Art. 19 TFEU – gives Council and EP power to adopt incentive measures and take action to combat discrimination

Art. 157 TFEU – equal pay

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<sup>116</sup> International Trade Union Confederation (ITUC), *Living with economic insecurity: women in precarious work* (ITUC 2011) 7; European Trade Union Confederation (ETUC), *Women in Trade Unions in Europe: Bridging the Gaps* (ETUC 2007); Framework of Actions on Gender Equality (2005), Final Draft of the European Social Partners published on 1 March 2005 (Brussels) by ETUC, UNICE/UEAPME, CEEP and ETUC; and others.

<sup>117</sup> The legal basis for social dialogue in the EU can be found in Arts. 154 and 155 TFEU. However, in this report, I will **not** elaborate on the legal provisions relevant to trade unions and Collective Bargaining in the EU Acquis, since this would go beyond the scope of this project. I only wish to mention that with the Treaty of Lisbon, the EU integrated the Charter of Fundamental Rights, also containing social dialogue provisions. Although the legal meaning of the Charter is still under dispute, it is clear that the inclusion of these rights in the Charter, as well as its adoption via the Treaty of Lisbon, shows the general importance that the Union appoints to social dialogue.

<sup>118</sup> See, e.g., Takis Tridimas, *The General Principles of EU Law* (2<sup>nd</sup> edn, OUP 2006) ch 2.

<sup>119</sup> The case law is indefinite; for an overview, see European Commission, *Compilation of case law on the equality of treatment between women and men and on non-discrimination in the European Union* (3<sup>rd</sup> edn, 2009).

<sup>120</sup> ‘Exploring positive action from a legal perspective’ in European Commission, *International perspectives on positive action measures. A comparative analysis in the European Union, Canada, the United States and South Africa* (2009) 27.

### 3.2.1.2. ECJ Case Law

Definition of positive action: “For a measure to be acceptable as ‘positive action’ for women in employment and occupation it must ... at least objectively, be based on clear and unambiguous criteria, address specific career inequalities and help women to conduct their professional life on a more equal footing with men.”<sup>121</sup>

### 3.2.1.3. Directives

Article 3 and 29 of Directive 2006/54/EC (Recast)<sup>122</sup>

Article 6 of Council Directive 2004/113/EC<sup>123</sup>

Article 5 and 14 of Directive 2010/41/EU<sup>124</sup>

### 3.2.1.4. Other Sources

Commission, ‘Strategy for equality between women and men 2010-2015’ (Communication) COM (2010) 491 final, 3.

Council Recommendation 84/635/EEC of 13 December 1984 on the promotion of positive action for women [1984] OJ L331.

European Pact for gender equality for the period 2011-2020, annexed to Council Conclusions 7166/11 at the 3073th Employment, Social Policy, Health and Consumer Affairs Council meeting (Brussels, 7 March 2011).

## 3.2.2. EU Acquis on Trade Union’s Role to Promote Gender Equality

Article 17, 21, 23, 26, and 30 of Directive 2006/54/EC (Recast)<sup>125</sup>

Article 2(b) of Directive 2010/41/EU<sup>126</sup>

Recital (15) of Council Directive 2004/113/EC<sup>127</sup>

Clause 5, Section 3 of the Framework Agreement on Parental Leave (revised) of 18 June 2009, annexed to Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework

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<sup>121</sup> For an overview, see: Marc De Vos for the European Commission, *Beyond Formal Equality. Positive Action under Directives 2000/43/EC and 2000/78/EC* (2007) 19. Relevant cases are for instance: Case C-450/93 *Eckhard Kalanke v. Freie Hansestadt Bremen* [1995] ECR I-3051; Case C-409/95 *Helmut Marschall v. Land Nordrhein-Westfalen* [1997] ECR I-6363; Case C-158/97 *Georg Badeck and Others, Interveners: Hessische Ministerpräsident and Landesanwalt beim Staatsgerichtshof des Landes Hessen* [2000] ECR I-1875; Case C-407/98 *Katarina Abrahamsson, Leif Anderson/Elisabet Fogelqvist* [2000] ECR I-5539; Case C-476/99; *H. Lommers / Minister Van Landbouw, Natuurbeheer en Visserij* [2002] ECR I-2891; Case C-144/04 *Werner Mangold v. Rüdiger Helm* [2005] ECR I-9981.

<sup>122</sup> Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) [2006] OJ L204/23 (Recast Directive).

<sup>123</sup> Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services [2004] OJ L373/37.

<sup>124</sup> Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC [2010] OJ L180/1.

<sup>125</sup> Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) [2006] OJ L204/23 (Recast Directive).

<sup>126</sup> Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC [2010] OJ L180/1.

<sup>127</sup> Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services [2004] OJ L373/37.

Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC [2010] OJ L68/13.<sup>128</sup>

3.2.3. EU Acquis on Gender Equality within Trade Unions  
Article 14(1)(d) of Directive 2006/54/EC (Recast)<sup>129</sup>

### 3.3. Summary of Policy Suggestions

Turkish Laws Examined:

**Trade Unions Act, No. 2821, dated 5<sup>th</sup> of May 1983 (in the following: Trade Unions Act);  
Collective Labour Agreement, Strike and Lock-Out Act, No. 2822, dated 5<sup>th</sup> of May 1983 (in  
the following: Collective Agreement Act).**

#### 3.3.1. Access to Trade Unions and Collective Bargaining Processes for Informal and Precarious Workers

Art. 2 and 20 of Trade Unions Act, and Art. 12 of Collective Agreement Act, have the effect of *de facto* excluding a large segment of women from trade union participation.

A first obstacle to women's ability to join trade unions is the narrow definition of "worker" under the Trade Unions Act. The EU definition might be a good example of a more inclusive approach. In *Deborah Lawrie-Blum v Land Baden-Württemberg* (1986)<sup>130</sup> the ECJ held that "worker" "must be defined in accordance with objective criteria which distinguish the employment relationship by reference to the rights and duties of the person concerned. The essential feature of an employment relationship is that a person performs services of some economic value for and under the direction of another person in return for which he receives remuneration. The sphere in which they are provided and the nature of the legal relationship between employee and employer are immaterial."<sup>131</sup> This means that the actual contract that employee and employer have is of less importance than the actual relationship between them, even if it is not formalized. Such an inclusive definition would not *prima facie* exclude workers with no formal work contract. It would give trade unions the possibility to represent a much larger segment of working women.

However, even this open approach would exclude unpaid family workers – one of the most vulnerable groups among working women in Turkey<sup>132</sup> – since they usually do not receive a payment for their services. Special strategies, tailored to specific regional situations, might be in place to reach these workers as well. There have already been some promising initiatives in this area (it needs to be mentioned, however, that the goal of these initiatives was not to include unpaid family workers in trade unions, but rather, to formalize their employment).<sup>133</sup>

A second obstacle are the quotas enshrined in Article 12 of the Collective Agreement Act. They effectively prevent domestic or home-based workers (among others) from conducting collective agreement negotiations. The best solution would probably be to significantly reduce these quotas, or

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<sup>128</sup> Framework Agreement on Parental Leave (revised) of 18 June 2009, annexed to Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC [2010] OJ L68/13.

<sup>129</sup> Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) [2006] OJ L204/23 (Recast Directive).

<sup>130</sup> Case C-66/85 *Deborah Lawrie-Blum v Land Baden-Württemberg* [1986] ECR 2121.

<sup>131</sup> *ibid.*

<sup>132</sup> CEDAW Committee, 'Concluding observations of the Committee on the Elimination of Discrimination against Women of its 46<sup>th</sup> Session: Turkey', (12-30 July 2010) CEDAW/C/TUR/CO/6, para 33, 34.

<sup>133</sup> Gülay Toksöz, 'Women's Employment Situation in Turkey' (ILO Country Report for the ILO Ankara Office, 2007) 97.



to abolish them altogether. If this is not possible, an exception for domestic and home-based workers, build after the example of the exception for workers engaged in the branch of activity covering agriculture, forestry, hunting and fishing, might be an alternative. (This report recognized the announcement of the Turkish Twinning partners that a draft law is currently being discussed which might change these quotas.)

Additionally, positive action measures to include and engage informal workers and workers in precarious jobs in social dialogue might be a considerable contribution to gender equality. This would be in line with EU policy, as for instance established by the 2010 European Parliament Resolution on precarious women workers.<sup>134</sup> In order to achieve the best results for gender equality, it might be advisable to open and strengthen trade union structures, and to adapt the collective bargaining process to EU standards. Strategies to tackle informal and precarious work could be devised in close cooperation with the social partners. Fortunately, there are already several promising projects which could be build on, such as the “Pilot Project on Active Labour Market Policies for Advancing Gender Equality through Decent Employment for Women in Turkey” by the ILO Ankara Office in cooperation with IS-KUR.<sup>135</sup> The implementation of already existing strategies, such as the “National Action Plan for Gender Equality 2008-2013,”<sup>136</sup> as well as the ratification of international instruments, such as ILO Convention No. 177 on Home-Based Work,<sup>137</sup> is also suggested.<sup>138</sup>

### 3.3.2. Fighting Discrimination Structures in Working Life

Article 7 of the Trade Unions Act prescribes certain elements to be included in the statutes of trade unions. This would be the perfect place to prescribe minimum standards which trade unions should adhere to. Generally, a commitment to gender equality could be mentioned here, such as the consideration of gender equality in the trade union’s activities on all levels, be it during collective bargaining, the design of internal policies, or the offering of programs and trainings. This paragraph could also include an instruction to indicate a framework for anti-discrimination and equality measures, and instruments of data collection to facilitate gender mainstreaming according to Article 29 of the Recast Directive 2006, as well as procedures for the dissemination of information according to Article 30 of the same Directive.

Article 9 of the Trade Unions Act contains provisions about the mandatory organs of a trade union. In this section, a special ombudsperson or other entity for women who have been discriminated against, harassed or sexually harassed by their superiors or co-workers, could be installed. Some of the competencies of this ombudsperson, a women’s committee and/or other entity could include: a) ex ante examination of discrimination claims brought forward against co-workers or the employer; b) information and assistance to victims of harassment and sexual harassment; c) supporting and advising women employees regarding their career; d) the design of instruments to facilitate anonymous complaints; e) representing women’s interests in general. This person or entity should be endowed with the necessary competences and rights to act independently and effectively.

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<sup>134</sup> EP Resolution INI/2010/2018 of 19 October 2010 on precarious women workers [2010].

<sup>135</sup> For more details, see: Özge Berber Agtas for the ILO Ankara Office, ‘Pilot Project on Active Labour Market Policies for Advancing Gender Equality through Decent Employment for Women in Turkey: Final Report’ (ILO Ankara Office, 2010).

<sup>136</sup> Prime Ministry of Turkey - General Directorate on the Status of Women, *National Action Plan: Gender Equality 2008-2013* (Ankara 2008).

<sup>137</sup> ILO Convention C177: Home Work Convention (adopted 20 June 1996, entered into force 22 April 2000) (83<sup>rd</sup> Conference Session Geneva 4 June 1996).

<sup>138</sup> To propose specific policies would a) go beyond the scope of this report, and b) be out of place, since the EU installs an equality framework and gender equality goals, but (with few exceptions) does not prescribe the concrete policies that have to be taken.

Article 32 of the Trade Unions Act regarding the activities of the union in terms of labour relations could include the representation of women (as plaintiff or defendant, or in another capacity) in matters arising out of discrimination or (sexual) harassment claims.

Article 33 of the Trade Unions Act, regulating the social activities of unions and confederations, could include explicit references to the following activities: a) vocational trainings and other programs meant to increase women's participation in the labour market, women's career development, women's access to jobs and promotions, women's participation in decision-making on all levels of the labour process; and generally raise awareness in favour of gender equality, as well as activities targeting men, particularly covering the issues of shared domestic and child-care obligations; b) offer crèches or other child-care facilities; c) collect relevant data in terms of equal treatment between men and women within an undertaking or a branch of activity (such as: average pay and pay differentials, data on workplace segregation, etc, which is a basis for gender mainstreaming measures according to Article 29 of the Recast Directive 2006; d) provide employees with information about the rights of women.

Article 34 and 35 of the Trade Unions Act regulate the appointment of, conditions concerning and functions of shop stewards. Generally, some of the tasks and functions mentioned above (especially regarding the dissemination of information, or the monitoring and support in cases of discrimination) could be carried out by a special shop steward, dedicated to further women's equality in an undertaking. However, shop stewards can only be appointed by trade unions "whose competence to conclude the collective labour agreement is certified" (Article 34 Trade Unions Act). The Turkish Twinning Partners confirmed that only unions with this specific competence could appoint show stewards. Thus, there needs to be an alternative solution in the case of trade unions which do not fulfil this condition.

Articles 2 to 5 of the Collective Agreement Act contains provisions about the content, scope, etc. of collective labour agreements. This might be the perfect place to include a commitment to and a consideration of gender equality measures when negotiating collective agreements, especially regarding crèches or child-care facilities (according to Article 21 (1), (2) and (3) of the Recast Directive 2006) and parental leave arrangements in accordance with Directive 2010/18/EU and the Framework on Parental Leave, 18 June 2009 (Annex to Dir. 2010/18/EU).

### **3.3.3. Increasing Female Participation in Trade Unions**

Articles 9 to 11 and 15 to 17 of the Trade Unions Act deal with the composition and function of the organs of trade unions. This might be the perfect place

- a) to introduce a specific organ (such as a women's committee) in charge of monitoring, promoting and implementing women's rights, creating and implementing gender equality programs and trainings, and to increase female participation in decision making processes. This organ would have to be endowed with certain powers and competences in order to ensure its efficacy;
- b) to introduce a women's representative on the management committee, the board of auditors and/or the disciplinary board, in charge of representing women's interests in the union;
- c) to introduce an entity to receive and examine (anonymously, if needed) discrimination claims against other union Members (for instance, located in the disciplinary board);

d) to reserve a certain number of seats in the management committee and the boards for female members.<sup>139</sup>

Article 24 of the Trade Unions Act, regulating the continuation or suspension of membership, holds that union members can keep their membership under certain conditions if becoming temporarily unemployed, accepting other employment, etc. This Article could also contain a provision which expressly lists the cases of pregnancy, maternity leave or parental leave, or leave of work due to child care obligations, as reasons to maintain the union membership, even if active work has to be (temporarily) suspended.

Article 31 of the Trade Unions Act allows an employee to carry out trade union activities either “outside his hours of work, or during hours of work with the employer’s permission.” This might be a strong deterrent for women to participate, since as shown above, they have a larger amount of obligations at home than men (such as child-care, housework, etc.). If an employer refuses his permission for employees to participate in trade union activities during work hours, it might be impossible for a woman to participate, at all, since she might not be able to stay after work due to her home-bound obligations.

When thinking about changing this provision, it might be advisable not to just introduce a special provision for women, but not for the rest of union members (e.g., allocating a certain time for female union members in which they can participate in union activities during working hours – but without expanding this time allocation to male members, as well). A special provision just for women might turn out to be a liability for women when looking for a job, rather than an opportunity (employers might be more reluctant to hire women if they know they might potentially have to grant them time off-work to follow union activities). Thus, it is advisable to change this provision for *all* union members.

This could happen, for instance, by allotting a certain amount of working-time for *all* union Members in which they can carry out union activities.

Division 2 of the Trade Unions Act (covering Articles 37 to 39) contains certain prohibited activities. It might be worth considering to include direct and indirect discrimination, harassment, and sexual harassment in the definitions of Article 2 of the Recast Directive 2006 in this division.

However, if a comprehensive Anti-Discrimination law is passed which includes these definitions as put forward by the Recast Directive 2006 (especially regarding direct discrimination, indirect discrimination, harassment and sexual harassment), the inclusion of these provisions in Division 2 of the Trade Unions Act might not be necessary.

Generally, it might be advisable to include some binding provisions in the Trade Unions Act which address the de facto situation of women, making it easier for them to participate in trade unions, such as:

- introducing a provision that official board meetings, management committee meetings or meetings of the general congress should not be held after 5 p.m., so that women with child-care obligations can participate;
- awarding unions which manage to achieve a certain women Membership quota by a given date;

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<sup>139</sup> This is also in accordance with demands made by the Prime Ministry of Turkey - General Directorate on the Status of Women, *National Action Plan: Gender Equality 2008-2013* (Ankara 2008) 52, and the Kadin Emegi ve Istihdami Girisimi (KEIG), ‘Women’s Labor and Employment in Turkey: Problem Areas and Policy Suggestions’ (KEIG Publishing 2nd edn. 2009) 28-30.

- introducing gender mainstreaming bodies to monitor, evaluate and analyse (in terms of a needs-analysis) the trade union participation of women.