



•With EU contribution

VS/2016/0394



FOCUS



**'Work-Life Management and CSR in the finance sector:
the legal references in Community law,
in perspective of social dialogue.**

Domenico Iodice – Apf Research Dept.

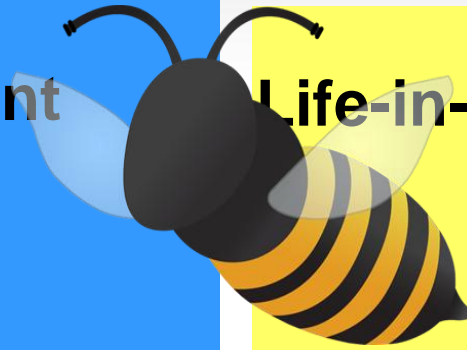
FOCUS



Topics and “Social Dialogue bee”

Work-life Management

(Area 1)



Life-in-work Management

(Area 2)

Corporate Social Responsibility

(Area 3)

Corporate Legal Responsibility

(Area 4)

FOCUS



Area 1 – the context and the actuality

The European Commission (DG Justice and Consumers) defined (August 2015) a road map for the initiative: "A new beginning for the challenges of the work-life balance faced by working families", aimed at the revision of the directive on maternity leave.

The initiative, which provides a public consultation (in which our organization participated) aims to increase the participation of women in the labor market in terms of quantity and quality "to allow parents with children and / or dependent relatives a better balance family with work life, greater sharing of family responsibilities between men and women, and the strengthening of gender equality in the labor market. "



Area 1 – the context and the actuality

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, TO THE COUNCIL, TO THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND TO THE COMMITTEE OF THE REGIONS

COM (2015) 610 final - Work Programme for 2016: "It's time to go beyond the usual"

"Our agenda for new skills will promote investment in human capital throughout the life ... Special attention will be paid to the balance between work and private life for working families, with a view to increase the participation of women in the labor market. Directive on women on the boards should be adopted in 2016 "

FOCUS



Area 1 – Gender equality the Boards of Directors

This project of law, presented by the European Commission in November 2012, is engaged in the substantial increase in the number of women on boards of EU companies, setting a minimum target of 40% of presence among the non-executive directors of listed companies the stock market and by requiring companies that have a lower share of introducing, in selection procedures for these posts, fixed, clear criteria, unique and formulated in a neutral manner. Penalties for businesses The European Parliament in November 2013 approved sanctions for companies that do not meet the 40% target, such as exclusion from public procurement, referring to the Council, but is today an agreement. According to the Council text would be amended in order to postpone the date on which the aim of the quotas should be reached, from 1 January 2020 to 31 December 2020, the date was on the limit given that the proposal is included in the Europe 2020 Strategy



FOCUS

Area 1 – The background

DIRECTIVE 92/85 / EC

It regards the implementation of measures to encourage improvements in the safety and health at work of pregnant women, nursing mothers, or breast-feeding

DIRECTIVE 96/34 /EC

It Concerns framework agreement on parental leave (UNICE -conf. Employers industry job - CEEP -datori of public work and public interest companies - and the ETUC)

DIRECTIVE 2000/78 /EC

It is concerning equal treatment in employment and occupation.

DIRECTIVE 2002/73 /EC

Amending Directive 76/207/EC on the implementation of the principle of equal treatment between men and women to access to employment, training and working conditions

FOCUS



Area 1 – Directive 2010/18 EU

- Directive 2010/18 / EU of the Council: implementing the revised framework agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34 / EC,
- Transposition problematic and uneven; hypertrophied or hypotrophic; differences between public and private; role of collective bargaining- European Parliament resolution of the 12 May 2016 on the application of Directive
- - The Commission has withdrawn its proposal for a revised Directive on maternity leave and do not currently intend to publish a final report on the implementation of the Directive on parental leave;
- - Non-legislative initiatives involving the social partners

FOCUS



Area 1 – revision Dir. 2010/18 EU

- Resolution of 9 June 2015 on the EU strategy for equality between women and men after 2015,
- Resolution of 20 May 2015 on maternity leave
- Resolution of 8 October 2015 on the application of 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 between men and women in matters of employment and occupation
- 04/05/2016 European Parliament report on application Directive 2010/18;
- then similar resolution of the May 12, 2016
- 13/09/2016 Resolution of the European Parliament on the creation of labor market conditions favorable to the balance between private life and professional life (concerns Area 1 and Area 2)

"every worker has the right to working conditions which respect his or her health, safety and dignity" **Art. 31 Charter of Fundamental Rights of the European Union.**

"DIRECTIVE MOTHER" n. 89/391 / EC

It promotes the adaptation of the protection of health and safety at work legislation to change in the world of work, making it mandatory for the employer to "ensure the safety and health of workers in every aspect related to work" and "adapting the work to the individual."

DIRECTIVE 92/85 /EEC

It regards the implementation of measures to encourage improvements in the safety and health at work of pregnant workers and workers who are breastfeeding

DOCUMENT OF THE EUROPEAN COMMISSION OF 1999

It includes the citation of stressors at work classified as Kasl (1991)

DECLARATION OF LUXEMBOURG (1997) subsequently updated in TOKYO DECLARATION (1998)

Relate to health promotion in the workplace, it indicates other stressors at work



FOCUS

Area 2

RESOLUTION OF THE EUROPEAN PARLIAMENT A5 - 0283/2001
Addresses the phenomenon of bullying in the workplace.

COMMISSION THE EUROPEAN COMMUNITIES (Brussels, 11/03/2002)It takes into account the change in work and society: introducing a new Community strategy on health and safety at work 2002-2006

COMMUNICATION FROM THE EUROPEAN COMMISSION (Brussels, 14.10.2005)Its aim is to protect the mental health of the population.

FOCUS



Area 2

The European Commission, in accordance with the procedure laid down art. 138 of the EU Treaty, and by that point 3.3.1. objective of 2002/2006 program, launched a consultation of the social partners.

So in May 2004 it was signed by the four major European organizations of workers and employers, the 2004 EUROPEAN AGREEMENT on STRESS IN THE WORKPLACE. It concerns work-related stress as a possible risk factor for workers, which must be adequately evaluated by the employer and, if present, must be managed in order to preserve the health of the worker (exclusions: violence, bullying, post traumatic stress).

COMMUNICATION FROM THE COMMISSION THE EUROPEAN COMMUNITIES (Brussels, 14.10.2005): defend the mental health of the population. EUROPEAN PACT FOR MENTAL HEALTH AND WELLNESS in the workplace: Conference (Brussels, 13.6.2008)

FOCUS



Area 2

Two EU Directives refer specifically to the need to take into account the mental stress in risk assessment:

Directive 90/270 / EEC on minimum requirements for work carried out using display screen equipment and

Directive 92/85 / EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and new mothers workers or breast-feeding.

FOCUS



Area 2

**COMMISSION THE EUROPEAN COMMUNITIES
(Brussels, 21.02.2007)**

Aims to improve quality and productivity at work, it presents a new Community strategy 2007-2012 on health and safety at work

Italian interconfederal AGREEMENT (09/06/2008) Regards the transposition of European Agreement on Work Related Stress

FOCUS



Area 2

The emergence of the work-related stress risk in Europe:

indirect measures (= direct consumer protection)

2005/29 Directive on unfair / unethical business practices describes the two main categories of commercial practices, that is "misleading" and "aggressive."

A practice is considered aggressive when freedom of choice or consumer behavior is considerably limited by it.

The Directive contains a list of criteria that help determine whether a commercial practice uses harassment, coercion or undue influence.

"Undue influence" means "exploiting a position of power over the consumer to apply pressure in a way which significantly limits the consumer's ability to make an informed decision"

FOCUS

Area 3 : the deafening silence of the European legislator

CSR seems to marry a perspective of self-regulation.

In 2001 came out "only" a Green Paper on corporate social responsibility, promoted by the European Commission, which viewed CSR "the voluntary integration of social and environmental concerns in their business operations and in their interaction with their stakeholders". In particular, two dimensions are identified. Practices relating to the internal dimension concern the management of human resources, the protection of health and safety at work, the management of industrial change and the environmental impact. The external dimension includes the relationship with the local community, with business partners, suppliers, consumers, promoting human rights and the environment at the global level.



FOCUS

Area 3 : the deafening silence of the European legislator

The European social partners in the banking sector (UNI Europa Finance, European Association of Cooperative Banks, the European Banking Federation and the European Federation of Savings Banks) signed in January 31, 2014 a joint declaration on CSR, extending to the 2005 Statement. The signatory parties wish to see the social partners at national level of the banking sector and of individual firms reactivate the overall discussion on CSR. They emphasize that the information and consultation in multinational companies are necessary for that to find solutions both in ordinary and extraordinary situations. fundamental issues of social dialogue: balance between the times of life and work; internal communication; Equal opportunities.

FOCUS



Area 3

From 1 January 2017 (financial statements to be presented in the year 2018) companies with over 500 employees will have to make public, in addition to financial information, including those relating to environmental, social, human rights policies, gender policies and anti-corruption.

Directive 2014/95 / EC of 22 October 2014 (in amendment to the Directive 2013/34 / EU) provides for the compulsory declaration of non-financial information and information about diversity. This information may hopefully encompass both the system of labor relations, both the business climate (arising from the work-related stress management and "commercial pressures" cd) that the company strives to provide its employees (measured in terms of objective and "subjective standard "). The information can express the quality and quantity of the trade union involvement and the negotiating results

FOCUS

Area 3

Whereas 18: *“Diversity of competences and views of the members of administrative, management and supervisory bodies of undertakings facilitates a good understanding of the business organisation and affairs of the undertaking concerned. It enables members of those bodies to constructively challenge the management decisions and to be more open to innovative ideas, addressing the similarity of views of members, also known as the ‘group-think’ phenomenon. It contributes thus to effective oversight of the management and to successful governance of the undertaking. It is therefore important to enhance transparency regarding the diversity policy applied. This would inform the market of corporate governance practices and thus put indirect pressure on undertakings to have more diversified boards.”*

Among these "different" entities fall within the workers' representatives, as both participate in a kind of "extended compliance", aimed at improving the effectiveness of internal control. And 'in fact the innovative diversity protection concept applied by the legislature, aimed at ensuring a sort of "cultural diversity" of strategic thinking within the company through the active involvement of the union. According to Recital 19, "If any on diversity policy is not applied ... there should be an obligation of the ... a clear explanation of the reasons" In the system philosophy of the 95 also articulated it presents new elements. Lawmaker introduces the notion of enterprise "collective responsibility"



Legal liability of banking professionals

Dense and homogeneous European legislation on legal and professional responsibilities of the industry (eg. Regarding MiFID and against money laundering)- Strengthened from liability, including criminal, of legal persons and thus corporate enterprises (Art. 85 and 86 of the EEC Treaty) Currently, the art.83, 2, TFEU contains a provision which would seem to constitute a positive basis of criminal jurisdiction in any industry or field of attribution of the European Union

Legal liability of a banking enterprise,

the European legislator has never defined the nature of the sanction regulation of institutions, leaving the choice to the individual state. Community law, thanks to the ECJ case-law, has gained more and more ground by imposing a system of protection required and obliged by the principle of loyal cooperation (or Community loyalty) defined now art.4 TEU: real penalty obligations

Directives in the credit sector

Here is a singular scope; and this for a number of structural reasons, historical and contingent.

- The banking sector is an outside-oriented system: companies, families, intermediate, states.
- - The skills, technical and professional responsibilities involved in the organization of the business processes and the delivery of concrete services are largely verifiable, ie traceable to some common job families and therefore "standardized": the risks are!
- Emerges even more clearly aware that the health and safety of workers may be affected by "cross-cutting risk factors", identifiable by their nature within the complex structure that characterizes the relationship between "the operator" and "the organization labor" in which it is inserted, so-called psychosocial risks

Negotiate in the absence of a framework

This (hypertrophic but not stringent) regulatory framework will open up large areas to define a covenantal law of matter. The scope of the legal recognition of qualifications across borders, however *it can not be at the level of collective bargaining*, because it does not exist in the European Union transnational collective bargaining: heterogeneous among them are the national legal systems within which takes place collective bargaining, and none of these systems is able to assign a greater role to supranational bargaining (is the well known problem of "erga omnes"). ruolo superiore, sovranazionale alla contrattazione (è il noto problema dell'"**erqa omnes**").

The EWC as a physical headquarters and mental place of transnational meeting

In the absence of a Community legal system, the construction of a trans-national framework that regulates the activities of the negotiating parties can start from physical locations and mental places where today the encounter between the reasons of enterprise and those of the collective representation of labor : EWC. They, as you know, does not play a role of collective bargaining function, but through the exercise of information and consultation rights granted by the Directive 2009/38 / EC, can achieve effective negotiating synthesis. In practice, the Joint Text signed by EWC and the corporate holding, thanks to external validation processes (that is, through the signing of agreements by the European industry federations and national unions), can become effective and enforceable throughout the Community perimeter of corporate action.

Social dialogue and the European trade union agreements under EU law

The **art.151 TFEU** emphasizes that social dialogue is one of the main objectives of EU social policy.

The **Article 153 TFEU** indicates the matters of shared competence with the EU Member States, to the exclusion of the right to strike, lock-out, the right of association and wages. Only in areas referred to in this article will be accepted for EU intervention.

The **Article 154 TFEU** gives the Commission the task of consulting the social partners at European level, both before and during the formulation of a legislative proposal to be presented later to the Council (remember that the Commission is the institution with the power of initiative legislative); on the proposal for the social partners will express a recommendation, although not binding.

Social dialogue and the European trade union agreements under EU law

The **art.155 TFEU** provides, then, the power of the social partners on the subject matter of the proposal, to inform the Commission that they themselves intend to settle the matter through collective bargaining, which freezes the Commission's action for a period of nine months. The agreements reached at the consultation stage, or those made autonomously by the social partners, can be implemented by means of two different procedures: a first procedure, defined as **weak** (free agreement) provides that the implementation of the discipline be best for the Member States ; the second procedure, defined as **strong** (agreements linked) provides for a proposal from the Commission and approval by the Council (the abridged procedure, in which Parliament has no role), which will issue a decision, in practice considered a directive.

E



CS

