

Yayun Yang

# The Implementation Mechanisms of the Principle of Gender Equality in the Labour Market in the EU

A Sino-European Comparative Analysis



**Nomos**



Arbeitsrechtliche Schriften

herausgegeben vom  
Hugo Sinzheimer Institut der Hans-Böckler-Stiftung

Wissenschaftlicher Beirat:

Prof. Dr. Wolfgang Däubler  
Prof. Dr. Olaf Deinert  
Prof. Dr. Michael Kittner  
Dr. Thomas Klebe  
Prof. Dr. Rüdiger Krause  
Prof. Dr. Dr. h.c. Ulrich Preis  
Prof. Dr. Dr. h.c. Monika Schlachter  
Prof. Dr. Marlene Schmidt  
Prof. Dr. Bernd Waas  
Prof. Dr. Dr. Dr. h.c. Manfred Weiss  
Dr. Johanna Wenckebach

Band 5

Dr. Yayun Yang

# The Implementation Mechanisms of the Principle of Gender Equality in the Labour Market in the EU

A Sino-European Comparative Analysis

Yayun Yang, lecturer at the Southwest University of Political  
Science and Law, Chongqing, P.R.China

---

**HSI**

Hugo Sinzheimer Institut  
für Arbeits- und Sozialrecht

---

Das HSI ist ein Institut  
der Hans-Böckler-Stiftung



**Nomos**

Hans-Böckler-Stiftung; China Scholarship Council

**The Deutsche Nationalbibliothek** lists this publication in the Deutsche Nationalbibliografie; detailed bibliographic data are available on the Internet at <http://dnb.d-nb.de>

a.t.: Bremen, Univ., Diss., 2021

ISBN 978-3-8487-8604-6 (Print)  
978-3-7489-1115-9 (ePDF)

**British Library Cataloguing-in-Publication Data**

A catalogue record for this book is available from the British Library.

ISBN 978-3-8487-8604-6 (Print)  
978-3-7489-1115-9 (ePDF)

**Library of Congress Cataloging-in-Publication Data**

Yang, Yayun

The Implementation Mechanisms of the Principle of Gender Equality  
in the Labour Market in the EU

A Sino-European Comparative Analysis

Yayun Yang

412 pp.

Includes bibliographic references and index.

ISBN 978-3-8487-8604-6 (Print)  
978-3-7489-1115-9 (ePDF)



Onlineversion  
Nomos eLibrary

1st Edition 2022

© Nomos Verlagsgesellschaft, Baden-Baden, Germany 2022. Overall responsibility for manufacturing (printing and production) lies with Nomos Verlagsgesellschaft mbH & Co. KG.

This work is subject to copyright. All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying, recording, or any information storage or retrieval system, without prior permission in writing from the publishers. Under § 54 of the German Copyright Law where copies are made for other than private use a fee is payable to "Verwertungsgesellschaft Wort", Munich.

No responsibility for loss caused to any individual or organization acting on or refraining from action as a result of the material in this publication can be accepted by Nomos or the author.

## Preface

The era of “men’s superiority over women” or “female subordination to male” seems to have already passed. Since the 19th century, through several waves of women’s movements, by making unremitting efforts and struggles, women have acquired equal rights before the law in the fields of politics, economy, culture, and society, etc. Nowadays, both in China and in Europe, women’s intelligence, skills and talents are undeniable, and the principle of gender equality is enshrined.

However, the reality is that we are still far from the ideal of gender equality in real life. In the labour market, although men and women have equal rights in matters of employment and occupation, hiring discrimination based on gender, the gender pay gap, and the so-called “glass ceiling” still present a longstanding dilemma for women. There are still many short-sighted employers who try to avoid recruiting female employees over fear of the potential financial and human costs. Women often suffer from entrenched stereotypes and prejudice, being perceived to be less calm and rational, not logical enough, and tend to be less focused on their career for childcare-related reasons.

Thus, the implementation mechanisms of the principle of gender equality are vital. Despite being an essential judicial remedial mechanism, the traditional individual or collective-based complaint only has effect between the individual employee and the individual employer, which cannot address the structural or institutional discrimination in society. It may be more effective to have states and governments to take positive action in different ways. Public procurement is one of such tools. As the EU Procurement Directives have admitted, a condition of developing gender equality can be established in public contracts. Gender quotas could also have a beneficial effect on increasing the proportion of women in the sectors where they are under-represented. But the most fundamental concern is to liberate mothers, who are deeply burdened by domestic work, by motivating and training their partners to be more active in unpaid work so that the traditional division of labour can be radically broken down. This book introduces and analyses these mechanisms in detail and discusses whether certain European experiences could be useful or adequate for China.

*Preface*

Indeed, from a macroeconomic perspective, only when women's talents and skills are well utilised in the same way as men's can our society meet its full potential. Justice in individual cases is important, but what is far more important is how society as a whole deals with gender discrimination. The achievement of gender equality in the labour market is of great significance not only for women, but also for employers, families, societies, nations, and the whole world.

*Yayun Yang*  
*November 2021*  
*Chongqing, China*

## Acknowledgments

This book is a revised and updated version of my doctoral dissertation that I completed in January 2021 and defended in May 2021 at the University of Bremen. In October 2016, I went to Bremen from Chengdu to start writing my doctoral thesis and came back to China in June 2021. Time flies. These four and a half years were like a wonderful and colourful journey for me. I had never imagined to meet so many friendly, kind, and important friends in Germany.

My supervisor, Prof. Däubler, is absolutely one of the most important persons in my life. I still remember the scene when I first saw you seven years ago in Beijing: a foreign teacher with a hairstyle like Einstein came to our classroom and brought us German labour law. At that time, you were a visiting professor from Germany, and I was an ordinary postgraduate student at the China-EU School of Law at the China University of Political Science and Law. You are an excellent teacher who is very good at teaching, gentle, patient, and always willing to communicate with students. As a supervisor, you have given me much useful guidance and remarks about my work. Without your encouragement and support, I believe that I could never have finished the PhD project in due time, and my life would be totally different. Indeed, your dedication to the academic world and your attitude towards others have always motivated me to be a better person. Words cannot fully express the depth of my gratitude to you.

I also want to thank my second supervisor Prof. Rust. Thank you for inspiring me to learn German in the beginning, inviting me to attend your classes relating to my research, and patiently answering my questions many times. And Prof. Kolbe. Even though we do not communicate much, I was motivated by seeing you often working overtime in the office. And Prof. Plett, thank you for taking me to the Christmas party organised by BIGAS, which made me get to know more colleagues as a newcomer. And Prof. Mückenberger. Thank you for your interest in my work and for taking my colloquium. And Marion. As a very considerate and professional secretary, thanks for helping me solve a lot of trivial matters. I would also like to thank Fatma. You are so brave, hard-working, and reliable. I will never forget the nice time we had experienced together in Bremen. And Yuanyuan. I am very grateful for the days when we encouraged each other

## *Acknowledgments*

to work better. And many other colleagues from BIGAS: Annika, Caroline, Christian, Eliane, Lars, Oliver, Sonja, Wiebke, and Yasemin.

My gratitude to Antje, Johannes, Linda, Maite, Moh, Pia, Prof. Gerhold, Saber, and Shirin. I really enjoy having lunch with you in the canteen on weekdays. Particularly, dear Antje, thank you for teaching me “Plattdeutsch” and sharing your stories with me.

I would also like to thank Rike and Helmut. As former flatmates, we have celebrated many birthdays and holidays, and taken part in various fun activities. You have brought me so many beautiful and unforgettable memories. And Thomas N, thank you for introducing me to German culture. I want to learn from you and be curious about the unknown, irrespective of the age. Special thanks to my two language partners: dear Waltraud, I really like reading German short story books with you, and dear Thomas W, you are so good at teaching German and talented in learning Chinese. And thank you Sieglinde, who has taught me to paint in oils, which had been one of my dreams for a long time. And many thanks to other German friends Matthias and Barbara, Gabriele and Hans-Martin, Anne and Marius, Andrea and Uli, Kosi, Ana, and Romy.

And dear Xiaoyan, thank you for being my Qigong teacher. I find that you are a wonderful person, and I like chatting with you very much. And also thanks to your husband Mr Yuan as a lawyer, who once took me to the Bremen State Court to see the mediation process of a case.

Also, I really want to thank Lars and Maria, and their little daughter Marlene in particular. Living with you during my last nine months in Bremen, I have had a deeper understanding of German culture and the warmth of a small family. For the first time in my life, I have closely witnessed a child growing from five months to one year old. How amazing it is!

And Dandan and Yuqian, we have visited dozens of European cities and cooked countless delicious meals together. Thank you for being by my side when I was in trouble. You have brought me a sense of belonging and happiness in a foreign country. And many other Chinese friends in Germany: LIU Yang and Yali, Junli and Shuhui, Zhangyuan, Fangzhi, Xiaoge, Jiawei, Weiqiang, ZHANG Jun, Xiaowen, Zhiyi, Xuhui, Boran, Ziyi, GUO Pu, and Jiajie. Also, some Chinese friends who are in China and have collected and provided useful research data for me: Shaoyu, Qingyang, Baijin, Xingqin, Huilin, Yazhen, Wenli, Weiqi, and Siyi.

I also want to thank the friends from the Chinese Christian Fellowship Bremen: Zhuyun and Chen Ying, Xiuying, Shanshan, Qingyuan, Shihan, Yiling, and Pastor Chen, to name but a few. You have given me plenty of



*Acknowledgments*

warm feelings, and I will never forget the nice time of reading the Bible with you together.

Special thanks to Prof. HAO Qian, Prof. ZHENG Yongliu, and Prof. YU Fei from China University of Political Science and Law, Prof. WANG Qian from Tongji University and Prof. Hu Dawu from Southwest University of Political Science and Law for all tangible and intangible support.

I am grateful to the China Scholarship Council for financing my PhD project and the Hans-Böckler-Stiftung that finances me to publish this book. Many thanks to Mr Simonis, Mr Rux, Ms Krausnick, Ms Schneider, and Mr Zoller from Nomos-Verlag and Ms Wenckebach and Mr Klengel from Hans-Böckler-Stiftung. Thanks for all your work and endeavour for the publication of this book.

I own my sincere gratitude to my friend Jonathan of Hawaii. You have shown me the meaning of Aloha by volunteering to assist me with the correct expression of English syntax and grammar. You have helped me by carefully and patiently reading the entire text and giving me very useful suggestions for language improvement. I am very touched by your kind help. Aloha.

Last but not least, I am particularly thankful to my family. Yinghe, thanks for your trust and encouragement. Special thanks are owed to my parents for their unconditional love. To my mother and my late father, I dedicate this book.

*Yayun Yang  
November 2021  
Chongqing, China*



## Table of contents

Acknowledgments	7
List of Abbreviations	17
Introduction	21
1 Background	21
2 Research Questions	23
3 Methodologies	25
4 Structure	26
Chapter 1 The Adversarial Mechanism: from Individual Complaints to Collective-based Remedies	28
1 Introductory Remarks	28
2 The Traditional Way: Individual Complaints	29
2.1 Introduction	29
2.2 The Burden of Proof	30
2.2.1 The Rule of the Transfer of the Burden of Proof	30
2.2.2 The Proof of Prima Facie Discrimination	34
2.2.2.1 The Proof of Prima Facie Discrimination in Direct Discrimination Cases	35
2.2.2.2 The Proof of Prima Facie Discrimination in Indirect Discrimination Cases	43
2.2.2.3 Evidence	47
2.2.3 Rebutting the Prima Facie Discrimination: Objective Justification	59
2.2.3.1 Justification in Indirect Discrimination Cases	60
2.2.3.2 Direct Discrimination Cases: No Justification?	64
2.3 Sanctions	66
2.4 Limitations	75
3 Collective-based Remedies: Equality Bodies	76
3.1 Introduction	76
3.2 Provisions concerning Equality Bodies at the EU Level	77

*Table of contents*

3.3 Equality Bodies at the National Level	79
3.3.1 Different Types of Competent Bodies for Gender Equality	79
3.3.2 Equality Bodies against Discrimination Based on Different Grounds: Unified vs. Separate	83
3.3.3 Legal Standing of Equality Bodies	86
3.3.3.1 Representative Action	87
3.3.3.2 Action in Their Own Name: Actio Popularis	93
3.3.3.3 Supporting Role	98
3.3.3.4 Amicus Curiae	99
3.3.3.5 Quasi-judicial Power	100
3.3.3.6 Ex officio Investigation	103
3.4 Limitations	105
4 Concluding Remarks	106
Chapter 2 Public Procurement and Gender Quotas	110
1 Introductory Remarks	110
2 Affirmative Action in the U.S.	112
2.1 Terms and Definitions	112
2.2 A Brief Historical Review: Executive Orders	113
2.2.1 The Embryonic Stage: 1930s and 1940s	114
2.2.2 The Rapid Development Stage: 1960s and 1970s	115
2.2.3 The Backlash Stage: 1980s	119
2.2.4 The Revival Stage: 1990s to 2010s	119
2.2.5 2017-present	120
2.3 Requirements and Controversy	121
2.3.1 The Legal Bases of Affirmative Action	121
2.3.2 Affirmative Action in the Labour Market	123
2.3.2.1 Overview	123
2.3.2.2 Targeted Goals or Quotas	125
2.3.2.3 The “Set-aside” Program	127
2.4 Results and Effects	130
3 Public Procurement in Europe	132
3.1 Overview	132
3.1.1 A Brief Historical Review of EU Public Procurement Law	132
3.1.2 Social Considerations in Public Procurement	134
3.2 Different Stages of the Public Procurement Process	135
3.2.1 Introduction	135

3.2.2 The Subject Matter of the Public Contract	136
3.2.3 Exclusion and Disqualification	138
3.2.4 Award Criteria	141
3.2.4.1 Public Contracts vs. Concession Contracts	141
3.2.4.2 Award Criteria at the EU Level	145
3.2.4.3 National Legislation and Practice	148
3.2.5 Performance Conditions	151
3.2.5.1 Performance Conditions at the EU Level	152
3.2.5.2 National Legislation and Practice	158
3.3 Re-thinking	162
4 Gender Quotas	165
4.1 Introduction	165
4.2 Early Stage: Gender Quotas in Political Parties	166
4.3 Gender Quotas in the Public Service Sector	170
4.3.1 Gender Quotas in Germany	170
4.3.2 Selection Criteria Developed by the ECJ	174
4.3.2.1 Case Study	174
4.3.2.2 Summary	183
4.4 Gender Quotas in the Private Sector	185
4.4.1 Gender Quotas at the EU Level: from Recommendations to Proposal 2012	185
4.4.2 Gender Quotas at the National Level	187
4.5 Re-thinking	192
5 Concluding Remarks	193
Chapter 3 The Family-friendly Legislation: Work-Life Balance	196
1 Introductory Remarks	196
2 Maternity Leave	198
2.1 Introduction	198
2.2 Maternity Leave at the EU Level	199
2.2.1 The Duration of Maternity Leave: 14 Weeks as A Minimum Standard	200
2.2.2 The Payment of Maternity Leave	202
2.3 Maternity Leave in the UK	204
2.3.1 Eligibility	204
2.3.2 Duration	205
2.3.3 Statutory Maternity Pay	206
2.4 Maternity Leave in Germany	209
2.4.1 Eligibility	210

*Table of contents*

2.4.2 Duration	210
2.4.3 Payment	211
2.5 Re-thinking	213
3 Paternity Leave and Parental Leave	214
3.1 Introduction	214
3.2 Paternity Leave and Parental Leave at the EU Level	215
3.2.1 The Legal Development	215
3.2.2 Main Provisions	217
3.3 Sweden: Full of “Latte Dads”	220
3.4 Paternity Leave and Parental Leave in the UK	223
3.4.1 Paternity Leave	223
3.4.2 Parental Leave	224
3.4.2.1 The Legal Development	224
3.4.2.2 Shared Parental Leave and Statutory Shared Parental Pay	226
3.5 Parental Leave in Germany	229
3.5.1 Parental Leave	229
3.5.2 Parental Allowances	231
3.6 Re-thinking	234
4 Flexible Working Arrangements and Other Family-friendly Measures	234
4.1 Introduction	234
4.2 Flexible Working Arrangements at the EU Level	235
4.3 Flexible Working Arrangements in the UK	238
4.4 Flexible Working Arrangements in Germany	240
4.5 Other Family-friendly Measures	241
5 Limitations	243
6 Concluding Remarks	245
Chapter 4 Modern and Digital Mechanisms: Several Possibilities	247
1 Introductory Remarks	247
2 Blind Recruitment	247
3 Teleworking	252
4 The Influence of Social Media	260
5 Concluding Remarks	263

Chapter 5 A Sino-European Comparative Perspective: Useful Experiences for China?	264
1 Introductory Remarks	264
2 Judicial Remedies for Gender Discrimination in China	265
2.1 Current Issues	265
2.2 Individual Complaints against Gender Discrimination	267
2.2.1 Cause of Action	267
2.2.2 Burden of Proof	271
2.2.3 Justification	275
2.2.4 Sanctions	280
2.3 Public Interest Litigation against Gender Discrimination: Is There A Future?	287
2.3.1 The Possibility of Public Interest Litigation against Gender Discrimination	287
2.3.2 The Latest Notice 2020: Which Body Should be Competent?	290
3 “Buying Gender Equality” in China?	294
3.1 Current Issues	294
3.2 Social Concerns in Public Procurement	297
3.2.1 Government Procurement Law 2002: Article 9	297
3.2.2 Implementation in Practice: No Social Considerations?	300
3.2.3 Summary	304
3.3 Local Legislation and Practice: Shenzhen as A Good Example	305
3.4 The Possibility of “Buying Gender Equality” in China: Internal and External Motivations	307
3.4.1 Internal Motivations	308
3.4.2 External Motivations	310
4 Work-life Balance in the Context of the “Three-child Policy” in China	314
4.1 Current Issues	314
4.2 The Historical Context: from “One-child Policy” to “Universal Two-child Policy” to “Three-child Policy”	315
4.2.1 Family Planning: A Unique Policy in the World	315
4.2.2 From 1980 to 2013: One-child Policy	316
4.2.3 From 2013 to 2016: Limited Two-child Policy	317
4.2.4 From 2016 to 2021: Universal Two-child Policy	318
4.2.5 Since 2021: Three-child Policy	319

*Table of contents*

4.3	Maternity Leave, Maternity Allowances and Additional Payment	321
4.3.1	Maternity Leave	321
4.3.2	Maternity Payment	324
4.3.2.1	An Overview	324
4.3.2.2	Maternity Medical Expenses	325
4.3.2.3	Maternity Allowances	327
4.3.2.4	Additional Payment for Maternity Leave	330
4.4	Breastfeeding Leave and Payment	332
4.5	Paternity Leave and Paternity Payment	334
4.5.1	Paternity Leave	334
4.5.2	Paternity Payment	335
4.6	Parental Leave	336
4.7	Challenges and Possible Solutions	337
4.7.1	Polarisation between Public Entities and Private Enterprises	338
4.7.2	Maternity Payment: Financial Support for Private Enterprises	341
4.7.3	“Paternity Allowances” for Paternity Leave?	344
4.7.4	What Is the Future of Parental Leave in China?	347
5	Concluding Remarks	350
	Conclusion	353
	Bibliography	359
	Index	395



## List of Abbreviations

AAG	Aufwendungsausgleichsgesetz (Expenditure Compensation Act)
ACAS	Advisory, Conciliation and Arbitration Service
ACEF	All-China Environment Federation
ACFTU	All-China Federation of Trade Unions
ACWF	All-China Women's Federation
AEntG	Gesetz über zwingende Arbeitsbedingungen für grenzüberschreitend entsandte und für regelmäßig im Inland beschäftigte Arbeitnehmer und Arbeitnehmerinnen, Arbeitnehmer-Entsendegesetz (Act on Mandatory Working Conditions for Workers Posted Across Borders and for Workers Regularly Employed)
AGG	Allgemeines Gleichbehandlungsgesetz (General Act on Equal Treatment)
AktG	Aktiengesetz (Stock Corporation Act)
ArbGG	Arbeitsgerichtsgesetz (Law on the Organisation of Labour Court)
ArbZG	Arbeitszeitgesetz (Working Time Act)
BEEG	Gesetz zum Elterngeld und zur Elternzeit, Bundeselterngeld- und Elternzeitgesetz (Act on Parental Allowance and Parental Leave)
BGB	Bürgerliches Gesetzbuch (German Civil Code)
BGG	Behindertengleichstellungsgesetz (Disability Equality Act)
BGleiG	Bundesgleichstellungsgesetz (Federal Act on Gender Equality)
BGremBG	Bundesgremienbesetzungsgesetz (Federal Act on Appointment to Bodies)
BVerfG	Bundesverfassungsgericht (Federal Constitutional Court)
CBCGDF	China Biodiversity Conservation and Green Development Foundation
CDU	Christlich Demokratische Union Deutschlands (Christian Democratic Union of Germany)
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women

*List of Abbreviations*

CFR	Charter of Fundamental Rights of the European Union
CNCD	National Council for Combating Discrimination
CPV	Common Procurement Vocabulary
CSR	Corporate Social Responsibility
CSU	Christlich-Soziale Union in Bayern (Christian Social Union in Bavaria)
CV	curriculum vitae
DIHR	Danish Institute for Human Rights
EASS	Equality Advisory and Support Service
ECJ	European Court of Justice
EEOC	Equal Employment Opportunity Commission
EHRC	Equality and Human Rights Commission
EIGE	European Institute for Gender Equality
Equinet	European Network of Equality Bodies
EU	European Union
EWCS	European Working Conditions Survey
FADA	Federal Anti-Discrimination Agency
FRA	EU Agency for Fundamental Rights
FührposGleichberG	Gesetz für die gleichberechtigte Teilhabe von Frauen und Männern an Führungspositionen in der Privatwirtschaft und im öffentlichen Dienst (Law on the Equal Participation of Women and Men in Management Positions in the Private and Public Sectors)
GG	Grundgesetz für die Bundesrepublik Deutschland (Basic Law for the Federal Republic of Germany)
GWB	Gesetz gegen Wettbewerbsbeschränkungen (Act against Restraints of Competition)
HGIG	Hessisches Gesetz über die Gleichberechtigung von Frauen und Männern und zum Abbau von Diskriminierungen von Frauen in der öffentlichen Verwaltung (Law of the Federal State of Hessen on Equal Rights for Women and Men and on the Elimination of Discrimination against Women in the Public Administration)
HMRC	HM Revenue and Customs
IAW	International Alliance of Women for Suffrage and Equal Citizenship
ICT	Information and Communication Technology
ILO	International Labour Organisation
ISO	International Organisation for Standardisation
IWSA	International Women Suffrage Alliance

*List of Abbreviations*

LBG NRW	Beamten-gesetz für das Land Nordrhein-Westfalen (Law of the Federal State of Nordrhein-Westfalen on Civil Servants)
LGBT	lesbian, gay, bisexual and transgender
LGg	Gesetz zur Gleichstellung von Frau und Mann im öffentlichen Dienst des Landes Bremen (Law of the Federal State of Bremen on Equal Treatment for Women and Men in the Public Service)
LTTG	Gesetz des Landes Rheinland-Palatine zur Gewährleistung von Tariftreue und Mindestentgelt bei öffentlichen Auftragsvergaben (Law of the Federal State of Rhineland-Palatine on Guaranteeing Compliance with Collective Agreements and Minimum Wages in Public Contract Awards)
MBE	Minority Business Enterprise
MuSchG	Mutterschutzgesetz (Mother Protection Act)
NEET	not in employment, education or training
NGO	non-governmental organisation
OECD	Organisation for Economic Cooperation and Development
OFCC	Office of Federal Contract Compliance
OFCCP	Office of Federal Contract Compliance Programs
OMBE	Office of Minority Business Enterprises
OMWBE	Office of Minority and Women's Business Enterprises
SGB	Sozialgesetzbuch (Social Security Code)
ShPP	Statutory Shared Parental Pay
SME	Small and Medium Enterprise
SMP	Statutory Maternity Pay
SPD	Sozialdemokratische Partei Deutschlands (Social Democratic Party of Germany)
SPL	Shared Parental Leave
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TzBfG	Gesetz über Teilzeitarbeit und befristete Arbeitsverträge, Teilzeit- und Befristungsgesetz (Act on Part-time Work and Fixed-term Employment Contracts)
U.S.	United States
UCD	University College Dublin
UK	United Kingdom
WBE	Women's Business Enterprise
WiC	Women into Construction

