

# Fifty Years of European Union Gender Equality Policy and Future Challenges

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## Abstract

In this paper, we aim to examine the progress in making policy for gender equality in the European Union. First we will briefly discuss how this story relates to European integration in general, and why European Union policy seems to see women primarily as workers. Then we will look at how policy on equality has evolved in three stages. Initially, policy focuses on the civil and economic rights of women, then it moves to considering how to advance the real situation of women and address roadblocks to their progress and finally it attempts to look at the relationship between the sexes through a gender perspective and apply those insights to policy using the techniques and strategies of gender mainstreaming. The most recent challenge for the EU is to address the issue of differences within the groups of women and men, thanks to intersecting issues of equality such as race and sexual orientation.

**Key words :** gender equality policy, European Union, women's rights

## Introduction

If you were a Belgian married woman in 1957, you could not have your own bank account or own property without being co-signed by your husband. You would only have been able to vote since 1948. If you happened to be working, you would have to retire at 60 years of age, and probably your salary would have been significantly less than that of the man working next to you. It would be very unlikely that you had been to university. Even in 1970 less than 10% of university students were female. Belgium, one of the founding member countries of the European Union reflected the position of women elsewhere in Europe. To our eyes today, accustomed to equal rights being guaranteed by law, women's situation in post war Europe seems like science fiction, yet then it was the most 'normal' thing in the world. Even though the UN established a commission that would become the Commission on the Status of Women in 1946, and reaffirmed in the Declaration of Human Rights in 1948 the UN Charter promise of 'the equal rights of men and women' (Preamble to UN Declaration of Human Rights), it was 'normal' for European women to be second class citizens.. Belgium and the oth-

er founding members of the European Economic Community had ratified an ILO convention guaranteeing 'equal pay for equal work' by this time. The founding document of the European Economic Community which becomes the European Union also contained an important element. In the Treaty of Rome (1957) -Article 119 required that each member state ensure the application of the principle that men and women should receive equal pay for equal work. But whatever the good intentions, in the 1950's, legally, economically and socially, European women were far from equal to men.

Today, the European Union prides itself on some of the most advanced policies to promote gender equality in the world. Progress on gender equality has also led to an expansion of protections developed for gender equality to other groups celebrated in events such as the 2007 Year of Equal Opportunities for all (Howard 2008). Many of the unequal situations above are now against the law, and the economic and social distance between men and women in European society has shortened dramatically. Statistics on the position of women and men in the different member states are now kept with care (Eurostat 2008, European Commission 2009). They indicate the relative progress of each of the member states on fundamental indicators of the social position of women. Policies are targeted to address a continuing battle to reduce remaining wage gaps and continue to improve the gender balance in society. 'Gender equality' has become the poster-boy/girl of the European Union, and one of the things which the institutions of the European Union (EU) underline as a success case in the integration process. The institutions provide documentation, and contribute to writing their own history in ways that portray the institutions in a positive light, contributing to the almost mythic status of gender equality as a victory of social policy in the EU.

Naturally, academics and women's movement activists as well as national politicians and bureaucrats critically nuance the official story of the EU institutions. The distance between what can be found in EU policy papers and in European lived reality is often great. The statistical studies about the position of women make clear that 'gender equality' let alone gender paradise is still far away, even for the best students in the European class. In this chapter we aim to examine the progress in making policy for gender equality in the European Union. A story that lasts more than fifty years is a challenge to tell in the brief space of this chapter, and there are as many possible versions of this story as there are tellers. Our goal is to provide you with a set of pathways through a complicated landscape that will help you understand the development of gender policy. Policy develops in context. We hope that you will gain an understanding of how gender equality policy relates to concepts and strategies developed in the ongoing process of European integration with increasing numbers of players, feminist organizing, and the increasing international and national focus on gender equality issues.

First we will briefly discuss how this story relates to European integration in general, and why European Union policy seems to see women primarily as workers. Then we will look

at how policy on equality has evolved in three stages. First policy focuses on the civil and economic rights of women, then it moves to considering how to advance the real situation of women and address roadblocks to their progress and finally it attempts to look at the relationship between the sexes through a gender perspective and apply those insights to policy using the techniques and strategies of gender mainstreaming. The most recent challenge for the EU is to address the issue of differences within the groups of women and men, thanks to intersecting issues of equality such as race and sexual orientation.

## European Integration, Economics and Gender

The accepted picture of early European integration emphasizes the role of economic interests as a driving factor. Peace and prosperity were to be achieved through trade and common markets. In the commemorative picture of the signing of the Rome Treaty, nary a skirt was to be seen among the sea of grey suits. The absence of women among the commemorative portraits of key moments in European integration is a theme frequently underlined in feminist critiques of the integration process. In fact, the term ‘women’ appears explicitly only once in the founding document, the 1957 Treaty of Rome. ‘Women’ make their entrance not at the behest of wild eyed feminists, but rather as a result of a compromise. Such compromises are typical of many deals in the journey towards European integration. The clause mentioning women was intended to solve another problem, but later on opens doors to new political opportunities.

Women’s rights were far from the negotiation table in the fifties, but it was not the case that the women’s advocacy was non-existent. The primary women’s demands in the period after the Second World War were for economic and civil rights. As noted above, the International Labor Organization had already passed a convention<sup>[A]</sup> on equal pay at the beginning of the fifties. The ILO case for equal pay was put forward by women’s rights advocates who underlined the contributions of women to the economy and justice. Trade unionists joined the battle, being fearful of the competition of cheaply paid female labor. When it came to the inclusion of a similar regulation in the Treaty of Rome, it was the argument of economic dumping of cheap Italian female labor on the French labor market that led to article 119 being introduced in the Treaty of Rome (Hoskyns 1996, Van der Vleuten 2007). This article<sup>[B]</sup> later becomes extremely important in gender equality policy<sup>[C]</sup>

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[A] Convention Number 100 concerning equal remuneration for men and women workers for work of equal value (ILO-100) (coming into force in 1953 <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C100> - C100 Equal Remuneration Convention, 1951)

[B] In the present European Community it is now referred to as Article 141 EC

[C] Although Belgium (1952) and France (1953) ratified the ILO treaty early, neither Luxembourg nor the Netherlands had ratified the ILO convention by 1957, and Germany and Italy came in just under the wire in 1956.

Telling the story of gender policy in the European Union context is complicated. As can be seen in the case of Article 119, it is clear that it was not straightforwardly linked to gender equality. Actors had different intentions, although ultimately, Article 119 assisted the fight for better gender conditions.

There are at least three things to be kept in mind in trying to understand the development of gender equality policy. The first is *the nature of the object of study*. European integration and the European Union itself have dramatically changed across a half a century, expanding from an arrangement to manage energy, coal and steel to an unusual sort of regional polity that affects a large majority of legislation and policy in 27 member states. Spin-offs from EU regulations affect trading partners globally. In these circumstances, the question of what 'Policy' is, and where it begins and ends is extremely relevant. Policy-making in the European Union is an exercise in multi-level governance (Conzelman and Smith 2008, Bache 2007, Hooghe and Marks 2001). The impact of a regulation hammered out between national actors in the international setting in Brussels can be very different in national and local settings with different gender regimes. Much gets transformed in translation. Identifying what gender equality policy actually is in Europe is a difficult question. It is not just the policy put on paper in Brussels, but how it is interpreted and carried out in states that have varying histories of connection and compliance to the European integration process. As Van der Vleuten demonstrates, the extent to which laws and decisions are successfully enforced depends on a myriad of national actors, lawyers, judges and particular governments (2007:27). Whether the policy is actually addressing issues relevant to the fundamental structures of inequality such as education, paid work, the household, citizenship and the state, sexuality and cultural institutions is also important (Walby 1990, 1997). Connected to the issue of the European Union's nature is the observation that European social policy is primarily reserved for the nation state. The EU is focused on trade and markets. Social ambitions have needed to be addressed primarily through issues around the labor market. However as Leibfried and Pierson suggested first in 1995, the demands of the single market could ultimately lead to including more and more social issues on the EU agenda, in a multi tiered structure (Pierson and Leibfried 1995, Leibfried in Wallace, Wallace and Pollack 2005).

The second issue is the problem of *writing European Union contemporary history* where the sources are still in flux. While some main aspects of European integration are now discussed in histories and biographies and autobiographies, the more policy making is confined to a sector, the less likely that there is a completely believable official story. Although some documents on EU decisions can be retrieved, the discussions and actors behind any given piece of policy are to be found in the primarily closed committee rooms in Brussels and in the participating Member States. It is not that there is a lack of investigation of the roots and impact of gender equality policy in Europe. Rather there are a diversity of stories emanating not only

from differing theoretical perspectives but also from the diversity of evidence and angles possible<sup>[D]</sup>. Policy is created in a setting that includes actors from many different levels, occupying positions both at the center and in the periphery. Thanks to the enlargement process, even the location of the center and periphery changes.

A third concern is how to identify *the role of developments in society and feminist thinking in policy making*. In what follows we will attempt to link parallels in thinking about gender equality among women's movement actors with different stages in European policy<sup>[E]</sup>. However, this is a risky undertaking, as the European thinking about equality and different national women's movements dynamics do not present a coherent picture. Debates in Germany are very different than those in Spain or in France. Just as there is no one 'feminism' so is there no single European women's movement, but many strands and interconnections that cannot be neatly restricted to a single moment in time (Roth 2008, Threlfall 1996, Ferree and Hess 2000). The heuristic division applied here is one possible organization of the story. It is intended to help you identify the main frames behind the varying approaches to be found in European gender policy. History is always a question of organization, and the story of gender policy in Europe is not one that can be neatly divided into streams. As Kronsell notes in the opening chapter, the different ways of understanding European integration will have an impact on the approaches and research questions. This applies to gender equality policy as well.

## Approaches to EU gender Equality - the role of theory

In what follows we see gender policy development as occurring in particular political and socio-economic climates, with a focus on the changing network of important actors from the women's movement, including academic feminists, the European institutions, and national political and bureaucratic contexts. We see the dominant interpretation of developments as a series of three types of approaches, chronologically following each other but continuing simultaneously (Booth and Bennett 2002, Mazey 1995, 2001, Nelen and Hondeghem 2000; Rees 1998, Squires 2007). The first period (1950's to end of 70's) is dominated by the demands of women's rights activists of the liberal equal rights feminist persuasion (Beasley 1999) for equality in civil and economic rights. This activism results in legislation requiring that men and women be *treated equally* and without discrimination. By the seventies the

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[D] [What follows builds particularly on the actor driven detailed description of policy making by Catherine Hoskyns, the description of the link between policy decisions and national considerations from an international relations perspective by Anna Van der Vleuten, (2007) and the practitioner-policy maker perspective of Teresa Rees 1998 - an appended set of recommended works treating the making of Gender Equality policy in Europe can be provided].

[E] In this we follow others who focus on constellations of actors such as Hoskyns 1996, looking at legal and women's activists, Mazey's focus on networks, Hubert 2001, Hellferich and Kolb 2001, etc. ...

struggles has been joined by an international women's movement, the so called and widely diverse Second Wave Feminism (Ferree and Hess 2000). The pragmatic and structural analysis of sexism, influences from civil rights activism and experience in the United States and elsewhere led to the realization that equality before the law (*de jura*) did not equate with factual equality (*de facto*) (Phillips 1995). The wrongs and structural inequalities of the past needed to be redressed if women were to be on an equal footing with men. Policies of *affirmative action* or *positive action*, characterize this second stage of measures adopted in the eighties. This second approach argues that government should not remain simply neutral, but should actively combat discrimination and pro actively work for equality, recognizing the differences between women.

The first approach underlines the need for Equal Treatment or formal equality, while the second approach argues that women will need special treatment, if substantive equality in terms of outcomes is to be achieved. This is sometimes referred to as the Wollstonecroft dilemma, referring to Mary Wollstonecroft (Lombardo 2003). The two seemingly paradoxical approaches reflect the debate between equality rights feminists and those noting the differences between women and men. For these thinkers, 'difference feminists', being measured by the male measure was a tainted bargain, since women had specific qualities.

A new contribution was the elaboration of the concept of gender as a relational and socially constructed situation, so that equality is not about "women" alone, but implicates women and men together. 'Gender' as a concept also allows progression from a dichotomy of men versus women, to the recognition of grey areas and construction of gendered identities (see eg. Judith Butler, 1990). Some see the third policy development of Gender Mainstreaming as a way to resolve the paradoxical dilemma of equal treatment versus special treatment (Squires 2007, Verloo 2006), as well as providing a platform for discursively dealing with other kinds of inequalities. Thinking about gender as a transversal and relational concept led to the idea that the policy process itself needed to be transformed to promote gender equality, through the process called *gender mainstreaming*.

### Stage One: Equal Rights and Equal Treatment Policies (1957- 1976)

This period contextually spans an important phase in European integration history, as the membership expands from 6 to 9 in 1973, bringing in the United Kingdom, a country that is hesitant about legislation in social affairs, Denmark, a country with a progressive track record, and Ireland as a conservative Catholic country. It is also an important period in terms of the European women's movement, with the rise of more radical forms of feminism and public activism in the early seventies, involving a young generation. The link between economic autonomy and equality was underlined in continental Europe by figures such as Simone de

Beauvoir and Christine Delphy. Socialist feminism, including many British feminist voices stressed the link between the capitalist order and the oppression of women (Barnett, McIntosh, Hartmann, Randall, Rowbotham, Beechey). Focusing on removing inequalities and barriers to economic autonomy as a key to women's liberation was a hallmark of much feminist action during this period. The economic opportunities for women to be able to achieve this autonomy were dramatically hampered by legal frameworks that reflected social preconceptions about women. These preconceptions confined women to roles as wives and mothers, and reduced their ability to act independently on the labor market. Things like marriage bars, early retirement requirements, prohibitions on night work and pregnancy firings robbed women of the right to work. In the fight for improved position of women, those who believed that equal civil and economic rights would lead to emancipation joined forces with those who also criticized the fundamental structure of society. Both aimed to remove formal legal barriers.

It is in this context that the early period with its struggle for equal rights and equal treatment before the law must be understood. Formal equality means being treated equally to others in the same situation. Lack of such equal treatment is then evidence of discrimination. Each small incremental step towards that formal equality involved battles in several venues (Hoskyns 1996, 2000). Initially much of the contention happened out of the eye of the public. Litigators attempted to expand the reach of the that small sentence in the Treaty of Rome guaranteeing equal pay, Article 119, presenting cases before the European Court of Justice such as the landmark hearing of an equal pension case (Defrenne, begun in 1968). So important was the Court that Masselot argues it was the main actor in shaping sex equality law. (2007:152). National governments were reluctant to put Article 119 into practice. Deadline after deadline passed as governments found practical objections to implementing Equal Pay (Hubert 2001, Van der Vleuten 2007:67.)

It was first in the seventies that member states implemented Article 119, and ultimately developed binding law for Equal Treatment in employment. Committed actors in Brussels both within the Commission and in civil society put pressure on, as the Commission received more leeway to work on social issues. The fact that women's socio-economic activity was growing in importance was also an important contextual factor (Hantrais 2000: 113). Another pressure for finally implementing Equal Treatment in employment was the international context. The UN pushed ratification of the Declaration on the Elimination of Discrimination against Women, and geared up to organize an International Conference on Women in 1975 in Mexico. This first UN conference on Women was a watershed bringing together not only comparative data about the status of the world's women, but also ideas and dreams about policy, and strategies for change. It introduced the decade for women which included conferences in Copenhagen 1980 and Nairobi 1985. This kept the international pressure to

innovate high, while providing a venue for networking and coalition formation (Hawkesworth 2006, Joachim and Lochner 2009, Moghadam 2005, Tinker 1999, True 2003)

UN member states are required to report on their activities in promoting gender equality. The EU would also have to make a presentation. Such duties force governments to be measured against their rhetoric. These international requirements were instrumental in pushing the major EU achievement of the seventies, binding legislation which implemented the original thin Treaty thread of Article 119. The three Equal Treatment Directives were major victories. While drafting began in 1973 (Van der Vleuten 2007:79)<sup>[F]</sup>, it took the decade to complete the series. The Directives expanded the equal pay principle to other issues affecting employment. These Directives would compel member states to bring their own legislation into compliance. While some of the member states were already advanced beyond the minimum standards guaranteed by the Directives, almost all had to carry out changes. Even the Nordic country of Denmark was not totally in compliance. For countries such as UK and Ireland, who joined in 1973, the three Equality Directives were instrumental as a motor for women's economic advancement. The UK had bitterly fought against such social legislation, and its women workers were among the most disadvantaged in Europe (Gregory 1987, Walby 1997). Rossilli argues that the EU worked as a catalyst to push the development of Equal Opportunities approaches (Rossilli 2000). Cases such as Italy, Ireland, but then later on Greece, Spain and Portugal illustrate this.

Even as these pieces of legislation helped level the ground, and answered a fundamental demand of all branches of the women's movement, some thinkers were exploring and widening the range of themes. Some felt that the equality regime generated by Europe missed chances to broaden the notion of equality beyond employment. They criticized the idea that all justice should be based on women's comparability to the position of men. By focusing on equal treatment, women sometimes lost ground in Court decisions, as the frame of formal equality did not allow for the positive valuing of difference. For example women were previously often allowed to retire earlier and to join their older husbands in retirement. Night work was prohibited for women meaning they were excluded from profitable overtime, but yet they were protected from the negative consequences of such work. These protections were lost if women and men were treated equally. The criticism was that the norm for equal treatment was male and that the male situation was often not desirable. Being treated equally meant being treated like a man (Rees 1998, Prigl 2007). A further criticism was that the European Union woman was constructed only as a 'worker'. This critique was particularly popular with conservative thinkers such as Hakim (2000) who argued that the EU was taking away women's choice

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[F] On Equal Pay for Work of Equal Value (75/117) On equal treatment in access to employment, vocational training, promotion, and working conditions (76/207) On equal treatment in social security matters (statutory social security schemes) 79/7

to be care-focused rather than career focused. Despite these criticisms, that lead Rees to describe this first stage of making treatment equal as basically 'tinkering' with gender relations, the lasting achievements in the revision of national sex equality regimes brought about by the Directives must be seen not merely as 'Tinkering' but as fundamental.

### Legislative Landmarks in European Union Gender Equality Law<sup>[G]</sup>

Title of Legislation	Provisions
Equal Pay Directive - 1975	<i>Provides that sex discrimination in respect of all aspects of pay should be eliminated.</i>
Equal Treatment Directive - 1976	<i>Provides that there should be no sex discrimination, either direct or indirect, nor by reference to marital or family status, in access to employment, training, working conditions, promotion or dismissal</i>
Social Security Directive - 1979	<i>Requires equal treatment between women and men in statutory schemes for protection against sickness, invalidity, old age, accidents at work and occupational diseases and unemployment.</i>
Occupational Social Security Directive - 1986	<i>Aimed to implement equal treatment between women and men in occupational social security schemes. Amended in 1996.</i>
Self-employment Directive - 1986	<i>Applies principle of equal treatment between women and men to self-employed workers, including in agriculture and provides protection for self-employed women during pregnancy and motherhood.</i>
Pregnant Workers Directive - 1992	<i>Requires minimum measures to improve safety and health at work of pregnant women and women who have recently given birth or are breast-feeding, including a statutory right to maternity leave of at least 14 weeks.</i>
Parental Leave Directive - 1996	<i>Parental Leave Directive - 1996</i>
Burden of Proof Directive - 1997	<i>Required changes in Member States' judicial systems so that the burden of proof is shared more fairly in cases where workers made complaints of sex discrimination against their employers</i>

[G] The source of this table is "50 years of EU gender equality law", October 25, 2007 <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/07/426>. Full titles of the legislation can be found on the web site of DG Employment, Social Affairs and Equal Opportunities of the European Commission at <http://ec.europa.eu/social/home.jsp?langId=en> and in the publication from DG Employment and Social Affairs entitled Gender Equality Law in the European Union ( 23/01/2008 ) available in pdf form at [http://ec.europa.eu/employment\\_social/emplweb/publications/index\\_en.cfm](http://ec.europa.eu/employment_social/emplweb/publications/index_en.cfm)

Title of Legislation	Provisions
Equal Treatment in Employment Directive - 2002	<i>Substantially amends the 1976 Equal Treatment Directive adding definitions of indirect discrimination, harassment and sexual harassment and requiring Member States to set up equality bodies to promote, analyse, monitor and support equal treatment between women and men.</i>
Goods and Services Directive - 2004	<i>Applies the principle of equal treatment between women and men to access to goods and services available to the public. Extends gender equality legislation outside the employment field for the first time</i>
Recast Directive Equal Treatment in Employment and Occupation - 2006	<i>To enhance the transparency, clarity and coherence of the law, a directive was adopted in 2006 putting the existing provisions on equal pay, occupational schemes and “the burden of proof” into a single text</i>

### Beyond Equal Treatment - the challenges of difference and the need for pro-active policy (1975-1992)

The strong character of the Directives of the seventies would prove to be the iron rod in the backbone of equality. Some Member States were forced to bring entire bodies of law into compliance to ensure equal treatment on the labor market. However, women’s activists noted the limited conceptualization of reasons for inequality and their persistence. Debate about how to reach equal outcomes persisted, carried by activists, but also increasingly helped by policy makers inside the state.

The period can be seen as both a consolidation and application of the Equal Treatment provisions, and as a doorway to new approaches, going beyond Equal Treatment, thanks to the criticism of feministscholars, femocrats and activists. In many ways the context of the EU was quite different. It again expanded, taking in Spain, Greece, and Portugal. Under the leadership of Jacques Delors it moved towards the Single European Act and the creation of the European Union and European citizenship in the 1992 Maastricht Treaty. The period of French socialist Delors (1985-1995) is associated with sympathy for social policy issues, but little real achievement (Leibfried 2005:247) except perhaps around gender equality issues. The European Court of Justice is deluged with cases concerning the application of the directives. Many focus around issues of pensions which thanks to the interpretation of the Directives are seen as part of ‘equal pay’.

### EU Women’s Policy Machinery Develops

One ambition of the UN Women’s Decade (1975-85) was that countries should establish policy machinery inside the state to deal withwomen’s issues. The EU reacted with speed,

setting up an Equal Opportunities Cell in DGV (Directorate General V, Employment, Industrial Relations and Social Affairs) in 1976. From this agency experts devised policy ideas and legislative proposals. The period saw the foundation of a number of bodies with women politicians and bureaucrats both at the European level and in the nation states who aimed to enforce women's rights. The creation of this women's policy machinery at the EU level brings new expertise from diverse corners of Europe. These networks and discussions lead to higher ambitions. In 1981 The European Commission created an Advisory Committee on Equal Opportunities for Women and Men, to serve as a catalyst for ambitions. The Commission started funding research and establishing European networks of experts on broader issues of equality in this period.

## Women's Policy Agencies in the European Union

### *EU Women's Policy Agencies Year founded Members & Work Conditions*

DG V- Employment and Social Affairs Unit Equal Opportunities for Women and Men	1979	Creation as an independent unit
European Parliament Committee on Women's Rights and Equal Opportunities	1984	Creation decided after first direct EP election thanks to work of ad hoc committee created in 1979, chaired by Y. Roudy
The Fundamental Rights, Anti-Discrimination and Equal Opportunities Group <sup>[H]</sup> - formerly High Level Group of Commissioners on Equality between Men and Women (1996)	1996 [new name 2005]	Commissioners concerned with these issues met 3-4 times yearly. An extraordinary meeting with Gender Equality stakeholders (EP,EWL,Council rep) traditionally takes place around March 8th In 2004 the group's mandate was expanded to include issues under the responsibility of the commissioner responsible for Justice and Security. Gender equality becomes one of the many issues.
High Level Group on Gender Mainstreaming	2003	Meets 2 x year on Beijing platform indicators 1 representative (from equality service) per country plus 4 officials from DG-Employment Participates in preparing Report to Council

[H] The group met four times a year under Santer and Prodi. After the rejection of Butiglione by the European Parliament in the confirmation interviews of the Barroso Commission, the group got broader competencies in the new frame of rights and anti-discrimination. It is now co-chaired by Frattini, only treating gender issues once a year.

This group is reinforced in 1996 under the 4th Action Program by a financial committee considering how budget should be allocated.

Advisory Committee on Equal Opportunities <sup>[I]</sup>	1981 amend- ed 1995	1 government member/civil servant from each MS 1 advisory board member from each MS 5 social partner members 2 observers from EWL
Inter-service Group on Gender Equality of the European Commission	1996	Monitors Annual Work Plans on Gender Mainstreaming in the Commission. All Commission's DG invited .
Networks: EU Expert Groups on Gender and Employment <sup>[J]</sup> and on Equality directives	1983	Team member in every member state and a European Coordinator (9 expert group were initiated but most dissolved in 1996)
DG Employment, Social Affairs and Equal Opportunities: Unit on Equal Treatment of Women and Men: Legal Questions	2005	
Gender Institute	2009(?)	

(Based on information from Website of DG-Employment, Social Affairs and Equal Opportunities 9 September 2006

(<http://europa.eu/scadplus/leg/en/s02310.html>) with own amendments)

In 1981 the European Parliament institutes the European Parliament Standing Committee on Women's Rights. It serves as an active watchdog of gender issues as well as being important in generating data about the situation in member states. Thus by 1982 in two of the most powerful institutions in Europe there is a machinery for Women's Policy, even if primarily in an advisory function.

The context became more supportive of women in part thanks to an increasing number of women entering the European institutions. In terms of descriptive representation, the period saw a substantial increase in women in political and bureaucratic positions. The Commission itself began to pursue affirmative action for its staff. The European Parliament continually had

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[I] This group is reinforced in 1996 under the 4th Action Program by a financial committee considering how budget should be allocated.

[J] 9 networks (education (officials of education ministries), training (coordinated by IRIS), affirmative action, child care (P. Moss and team in each Member State), women in decision making (Sabine de Bethune and member state experts), etc.) were created between 1983-1993 but were all discontinued except for the legal and employment groups at the end of the Third Action Program in 1995. In the 4th Program period, a structure/consultancy called ANIMA won the bid to coordinate expert advice to the Commission and the previous expert networks were disbanded.

a higher percentage of female MEP's than in parliaments in most of the member states. Civil society also grew and changed. European women's researchers and academics began cross national organizing (founding CREW Center of Research on European Women, and later WISE, AIOFE, ATHENA and in 2009 AtGender). These efforts received some seed support from the Commission to inventory research being done in women's studies and on women's issues. Gradually a forum also grew for non governmental women's groups beginning with ENOW, which organized grass roots women's groups founded in 1983 (Hoskyns 1996, Pillinger 1992 cited in Rees 1998:57 and Hantrais 2000:114). The foundation of the European Women's Lobby in 1991 finally began to organize major national women's federations in a powerful umbrella.

Thanks to the more intensive European networking and developments within international feminism, the ambitions for gender equality policy grew. The contrast between the reality of policy and the dream was great. Thus, some see this period as one of stagnation at the European level while national actions were proceeding apace. For example; there were clear problems with the application of equal treatment, such as the differential treatment of part-time workers. Most part-time workers are female, but these workers were deprived of many of the rights to insurance, pension schemes and protection that their full-time colleagues received. These inconsistencies and discriminations led to proposals for a new directive on part-time work in the early eighties, but it was not passed until 1997. Another proposal that stagnated was a Directive to regulate parental leave which did not pass until 1996.

## Two new directives and Action Plans

Despite frustration on the legislative front, two achievements come out of the period. These take the form of norm changes rather than hard law, providing frames and definitions. The first achievement is a further refinement of the specific issues of women in employment, which can be seen to some extent as acknowledging some of the specificities of women as workers. Two new Directives take up the variety of social security schemes. For example, wives on farms and in small business worked in the business but were invisible, and thus not covered. This is a nice illustration of the consequences of considering the specificity of women in equality policy, as the work of farm wives in their husband's business had been seen as a natural part of the role of wife, rather than as 'work'. Thus the farm woman had no 'worker's' rights. A directive in 1992 pays attention to the health of pregnant workers and young mothers. The Court decisions during this period also seem to begin to acknowledge differences between men and women as workers, even if they avoid consideration of the impact of unpaid and family work on substantive equality of women and men (Rees 1998: 57.)

The second achievement is the intensification of and reconceptualization of activities around gender equality going beyond simple guarantee of equal treatment. In 1984, the Council recommended 'the promotion of positive action' for women' (Council Recommendation 84/635/EEC of December 13 1984 on the promotion of positive action for women OJ L 331/34, 19.12.1984) The reasoning was that structural and material issues hamper women's ability to compete 'equally' on the labor market. To reach substantive equality, targeted measures were needed for the disadvantaged. Thus it would be allowable to invest extra in building up the skills of women. In practice, most projects were aimed at occupational training. Positive or affirmative action is a major shift in policy and norms acknowledging the specificity of women, rather than simply comparing them to men. It involves many actions ranging from training to targeted hiring practices, where the under-represented sex is specifically recruited. As in the United States, positive action approaches are controversial, as they seem at first glance to conflict with the idea of Equal Treatment (Stratigaki 2005)

Beginning in the mid-eighties, the instrument of the 'Medium Term Community Action Programs' ranging from 3 to 5 years in length allowed the Commission to propose actions designed to create 'equal opportunities for women and men'. Each of the action programs expressed extensions and expansions of what should be considered as suitable terrain for governmental action on equality issues. The lobbying around the content and wording of these Programs succeeded in subtly stretching the frame beyond the limitations of paid employment. The Programs demonstrated that outcomes in paid employment are related to many other aspects of the position of women and men, ranging from education to the organization of personal lives and the sex composition of decision makers. Action programs addressed both continued improvement in the legal framework thanks to their Recommendations and Resolutions, and built capacity in international policy networks. Participation in international consultations acted as a two way street, bringing information into the Commission and serving to build awareness and expertise with the European stamp of prestige in the domestic setting. The second Medium Term Action program (1986-1990) established 3 expert networks explicitly dealing with employment and the equality directives. The following programs went further, creating expert networks looking at business, broadcasting, issues in child care, education, science, decision making in a number of sectors, and families and work. The names in the networks as well as many of the reports produced are a who's who in gender equality thinking in Europe. The Action programs provided seed money for transnational contacts between women researchers and activists. In this pre-internet and pre-gender studies time, the *Women of Europe Newsletter* crucially shared comparative knowledge about the situations of women in other countries and introduced the names of experts and researchers working on these questions. The contrasts in European experiences stimulated debate and opened eyes to the diversity of women's experiences in Europe and the importance of policy for changing women's positions.

Rees characterizes the work of the Action Programs until 1990 as being primarily focused on the positive or affirmative action approach (Rees 1998:62). In the drafting of the Third Program 1991-1995, the envelope moves toward making equality policy a broader part of all Community policies, and expanding the net to include participation not only in economic but also in social life. The focus is still very much on 'women', but the structural reasons for gendered inequality begin to come more to the forefront.

The production of equality policy evolves rapidly through the 80's in part thanks to the debate going on among women activists and scholars across national boundaries. Women's studies departments begin to be established in universities (Bird 1996) providing a research base for policy ideas. In the European Union, ideas of French feminists, Scandinavian feminists, German feminists and British feminists and other traditions cross and compete in international conferences and policy consultations. These debates about the logic of equality policy have an impact on the goals and form. The perhaps most important debate is between 'difference' feminists who underline aspects of women's unique nature and as policy goal demand parity representation in decision-making and in society, and the 'equality' feminists who look to structural and economic aspects of women's oppression and focus on redressing barriers and equal opportunities. These two perspectives lead to different policy solutions.

The idea of 'gender' itself also spreads during this period. The most progressive actors underline the *construction* of inequality in inter-relational terms. They claim that the issue is not about equal opportunities between men and women, but about gender inter-relations which implicate both men and women. The gender equality activists will try to go beyond 'women', and beyond the labor market to attack policy transversally. The seeds of the gender approach, which contains elements of both difference feminism and equality feminism, can be recognized in The Third Action program, but it is during the nineties that the policy consequences of conceiving the equality problem in terms of gender become evident in the gender mainstreaming approach.

## The nineties and transformation through mainstreaming

Until the nineties, almost everything to do with social and women's equality issues in the EU had to be tied to aspects of employment and the creation of the single market. Developments in the context and institutions of the EU itself including enlargement, as well as the societal and intellectual developments around the position and political strength of women as civil society actors contribute to making the nineties a decade of dramatic policy changes for women. Almost half of the EU legislation regulating gender equality issues was adopted

or significantly amended from 1992 to the present. By 2008 this legislation influenced the lives and opportunities of more than 495,395,000 people.

The Treaties of Maastricht (1992) and Amsterdam (1997) transform the EU in terms of gender. They introduce EU citizenship, a Social Protocol, and a legal base for prosecuting discrimination. The Mediterranean new members of Spain, Greece and Portugal who acceded in the eighties move towards full membership in this period, while Austria, Finland and Sweden join in 1995. Although all is couched in the pursuit of a Single European Market, the inclusion of protection and concern for social citizenship is a major achievement for civil society actors. The discourse about equality moves from constituting women solely as workers, and perhaps occasionally as mothers, to seeing women and men as citizens in society. Transnational actors and European platforms for social issues also become more consolidated during this period (Cram 2006). The incorporation of the European Women's Lobby provides an umbrella for established women's groups across Europe in Brussels while groups such as The Social Platform (1995) bring together federations of non-governmental social actors ranging from older persons to youth.

The debate about the appropriate methods to reach gender equality raged. The concept of equality reflected in decisions from the Court of Justice was criticized as being androcentric since it used man as the measure. For discrimination cases, a comparison was needed and this was usually the man. It was posited that women were of equal value but different. Further, Equal Opportunity and Equal Treatment had not delivered 'Equality'. The slogan '*De Jure* does not equal *De Facto*' summed it up. The model of becoming more like a man or being compared to a man came into question. It became clear in practice in the US and in the EU that sometimes formal equality actually produces further inequalities (educational requirements when education is not available or requiring reading for voter registration). The notion of indirect discrimination from United States crossed the Atlantic (Gregory 1987).

Participation in the international debate also underlined the diversity of women. For Europe, the preparations and discussion about proper policy for the 1995 UN Beijing Conference on women were intertwined with preparations for the landmark Treaty of Amsterdam and activities within the wider membership of the Council of Europe which had been investigating women's and men's equality. European feminists were prominent in the preparation process of the UN Conference which launched a broadly conceived Platform for Action and they were implicated in the conception of the next step in policy making. Given the limited success of Equal Treatment and Positive Action approaches, the UN Platform of Action aimed to go beyond equality questions, to transform doing policy and society to take account of gender differences and promote equality. The term 'gender mainstreaming',

stemming from experience in the field of development that demanded that development policy be examined for its impact on gender relations<sup>[K]</sup>, was launched as a cornerstone technique in the Platform for Action. It aimed to examine the position of women and men in all areas of society to improve human well-being.

The EU had already been looking for a horizontal approach to equality issues in its Third Medium Term Action Plan. With these international developments, actors in the European space, including colleagues at the Council of Europe, and national actors, united around a mission to go beyond existing equal opportunity programs. Using the idea of gender, all policy areas could be addressed. The European Commission adopted gender mainstreaming in a Communication in 1996 (COM 1996 67 final). From the first it officially attempted to use this tool in addition to other equality policies such as affirmative action, the dual track approach. Thanks to the developments in international obligations as well as centrally stated objectives in the Treaty of Amsterdam, the policy machinery devoted to monitoring gender equality in the European Commission grew. A Fourth (1996) and Fifth (2001-2005-2006) Action plan were approved.

Gender mainstreaming aimed at vetting policies systematically to see that all policies would contribute to achieving gender equality. Policies were to be examined starting with the planning stage to evaluate their effect on women and men using a gender perspective. In implementing gender mainstreaming, actors developed different kinds of policy instruments including indicators of gender equality (stimulated by the European Council), ways to gender test policy proposals in Impact Assessment procedures, and gender budgeting. Research grants stimulated comparative projects on how gender mainstreaming is applied. The gender mainstreaming approach also spread to countries preparing to join the EU from Central and Eastern Europe.

Thinking transversally about the equality problem in gender terms and using the better legal tools provided in the Treaties was important in spreading the equality effort beyond issues of women on the labor market. While efforts and goals to improve women's position as worker

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[K] Gender mainstreaming is the integration of the gender perspective into every stage of the policy process - design, implementation, monitoring and evaluation - with a view to promoting equality between women and men. Gender mainstreaming is not a goal in itself but a means to achieving equality. Similarly, it is not concerned only with women, but with the relationship between women and men for the benefit of both. Specific actions may be required in addition to remove those inequalities between women and men which have been identified.» This is the standard working definition being used in manuals for gender mainstreaming at the European institutions today. (European Commission Directorate General for Employment, Social Affairs and Equal Opportunities Unit G1. Manual for Gender Mainstreaming: Employment, Social Inclusion and Social Protection Policies. Luxembourg: Office for Official Publications of the European Communities, 2008 (c), p. 3)

continued, programs also developed to address the issue of violence against women, trafficking, the position of women in research and the treatment of gender issues in development policy (Hafner-Burton and Pollack 2009).

Gender Mainstreaming as it has been applied includes 4 elements: 1) measurement and monitoring, 2) implementation, 3) creating awareness, ownership and understanding, and 4) gender proofing and evaluation (European Commission 2008 c: 11). What a gender mainstreaming approach can mean is illustrated in the changes in European policy for funding scientific research. First, in terms of measurement, the Directorate General Research reviewed the position of women researchers taking into account the accession countries (disaggregated statistics). It noted the under representation of women in the ETAN report (Rees 2001, De Wandere 2002). It assigned officers to work on gender equality, and create awareness, implementing its ambitions by committing staff to carry out these efforts. Ultimately, the procedures for requesting funding changed. Research teams were required to account for the impact and relation of their research to gender issues and to demonstrate gender balance in research teams. Government research funds were held accountable to advancing the position of women. This led to more research on gender issues in comparative projects. Finally, research was evaluated which fed back into the role of the support in terms of research on gender. The progress in using research policy to advance gender equality can be seen as an example of a dual-stream gender mainstreaming approach. It combined the old positive action approach using specific actions for women by funding specifically gender focused research, with the new idea that most policy areas, including science, have a relation to gender inequality, and can be addressed transversally.

## **Mainstreaming Equality: the new century and the challenges of diversity- Back to the Future?**

Though the nineties and early millennium years seem rosy, careful observers checking the distance between ambitions and delivery are more cautious about the actual state of gender equality policy and results in the EU. The late nineties formed a kind of a peak, where many constellations came together, and even the diversity of women could be recognized. Transnational social actors began concerted action and social ambitions became an accepted part of the European mission, enshrined in the treaties of the nineties, the work on the Constitution, and the Lisbon goals. However, with the Enlargement of the European Union in 2004 and 2007; and changing economic realities, some note that the position of gender equality is under threat. Stratigaki (2005, 2007/8) traces the reframing of work-family policy to focus only on women rather than gender, while Jensen notes the LEGO-ization of welfare, with a focus on the child rather than on gender relations (2008).

Besides the reframing of issues to sideline or re-familize women, one of the most frequently observed challenges lies paradoxically in the achievements of the Treaty of Amsterdam. The treaty explicitly recognized the issue of discrimination and obligated the member states to undertake measures to combat it. Article 13<sup>[L]</sup> prohibits discrimination on the grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. To put this into practice the European Commission opted to set up a special unit to deal with anti-discrimination on other grounds than gender. Gender was thus structurally excluded from the main new area of action. Although a separate set of offices to support legal and program work in gender equality was maintained, this was a bit of a pyrrhic victory which left gender frequently marginalized in discussions about conceptualizing and promoting policy to continue equality work. In terms of our discussion above, the anti-discrimination frame is similar to the Equal Treatment approach that characterized the first years of gender equality work. Some argue that gender mainstreaming thinking moves beyond mere Equal Treatment (Squires 2007, Woodward 2008). Further, different kinds of identities which could lead to discrimination and might intersect, have had a hard time being included in the new framework.

Some see the demise of the Action Plan approach in favor of the Road Map for Equality between women and men (2006-2010) as a harbinger of lower opportunities for gender equality (Ahrens 2008). Without hard incentives, argue Hafner Burton and Pollack (2009), real progress towards gender sensitive policy will be difficult. The land-gains in terms of the conceptualization of the roots of inequality and the public policies necessary to redress them seem to be lost - as for example in the change of name from 'gender' to 'equality between women and men'. That changes in names often mean changes in substance and are not merely symbolic is pointed up by the scholars in the MAGEEQ project (Lombardo, Meier, Verloo 2008).

The indications for the future are mixed. Can a transnational polity such as the EU really change gender relations through policy? There are many structural roadblocks, including the issue of economics and social class which are not addressed by these policies (Duncan 1996).

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[L] Article 13 was first adapted in Treaty of Amsterdam and is now Article 13 in the Treaty establishing the European Community (Nice consolidated version) EUR LEX 12002E013 (consulted 13 Aug 2009) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12002E013:EN:HTML>

1. *Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.*
2. By way of derogation from paragraph 1, when the Council adopts Community incentive measures, excluding any harmonisation of the laws and regulations of the Member States, to support action taken by the Member States in order to contribute to the achievement of the objectives referred to in paragraph 1, it shall act in accordance with the procedure referred to in Article 251.

Yet the EU has enjoyed progress that in comparison to much of the rest of the advanced world looks dramatic (Inglehart and Norris 2003). An important role still needs to be played by gender watchdogs in civil society and academia. On the front of employment, which has always been the heartland of European gender equality efforts, critical observers note the eradication of the gender issue or re-tracking from top priority to a lower issue. (Plantenga, Remery and Rubbery 2007). In other areas, the competition with other forms of inequality and the strange structural situation which puts gender in one box and all other forms of inequality in another one also lessens the focus on persistent problems in reaching gender equality. The challenge of the Enlargement and the extent to which new members to the European Club sufficiently support equality initiatives is also advice cautious conclusions about the future.

## Conclusion

More than fifty years later, our Belgian married woman is no longer in the same place, thanks to the social and political developments of European integration. She joins sisters in 26 other countries governed by the treaties agreed to by European governments that guarantee that she should receive Equal Treatment to others (men). An unavoidable conclusion in looking at 50 years of gender policy in the European Union and the changing position of women is that much happened. During this period, parental leave was finally mandated (1996) protection of part time workers expanded (1997), and the directives on equality treatment were revised and recast, (2006) to include a broad directive mandating equal treatment not only in terms of employment but for goods and services. Gender equality was claimed as a success of the EU in its 50th anniversary celebrations (2007) and gender equality led the parade as an example for other issues of ascriptive equality in the Year of Equal Opportunity for All. To cap it all, a new piece of policy machinery came in place, the soon to open Gender Institute.

The social and economic distance between men and women in European society has shortened dramatically. Yet women in Europe still receive less pay than men (16%) despite the fact that equal pay was the cornerstone of the first European treaty. Women have made substantial inroads in politics. Female representatives are now 31% of the European Parliament, and across Europe women make up 21% of representatives in national first chambers of parliament (Inter-Parliamentary Union <http://www.ipu.org/wmn-e/world.htm> consulted 30 March 2009). There are even national governments that have reached parity among governing ministers (Sweden, Spain). However, we also know that women are under-represented in other areas of socio-economic decision making (European Commission 2008 a). Women have also made remarkable inroads in higher education, a pathway very difficult to follow in many European countries in 1957. Concerted efforts to think about the problems of raising children when parents are employed have led to substantial improvements in access to childcare even in traditional countries thanks to European discussions and guidelines. Yet many women

'choose' to remain childless or have fewer children than they wish (Commission of the European Communities 2008).

For many, the situation of the fifties seems light years away. Some even feel that gender equality is a policy priority that can be scrapped from the agenda, given the dramatic achievements in the position of women. Still the oppressive gender contract remains comfortably intact according to some (Stratigaki 2007/8, Pr?gl 2007), with women providing the care and men enjoying their services.

The contributions of gender studies and women's movement activism, as well as the evolving reality of a mobile European society with intermingling gender understandings and histories as people migrate meansthat our understandings of what equality would mean in Europe and for whom have been evolving. Thanks to better statistics and more critical analysis, most equality actors are aware that there is still much to be done in Europe to achieve a situation where women want to live. The goals of bodily integrity, being able to contribute and profit from meaningful work, and social and political are not attained for the majority of Europe's women. The variety of European realities is dramatic, ranging from Malta to Finland, Romania to the UK. It provides a living laboratory for how cultures, policy and activism will be changing gender relations in the future. The most optimistic conclusion is that thanks to this learning laboratory, the experience of the European Union can help provide ammunition for other countries that still have a longer way to go in changing gender relations.

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