

Gender equality, from the Treaty of Rome to the quota debate: between myth and reality

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Introduction

Gender equality is a fundamental human right. It is a moral imperative linked to principles of justice and equity, and with political, economic, social and cultural aspects. It is regarded as an essential factor in well-being and happiness across the world (OECD 2012) and is guaranteed internationally (ILO, UN) and at European (Council of Europe) or national level by means of a substantial body of legislation.

What, then, is the situation within the European Union (EU)? We are familiar with the ‘family photos’ of the Heads of State and Government of the EU Member States. The famous photo taken at the signing of the Treaty of Rome in 1957 contained only men. At the 50th anniversary of the birth of the EU (2007) little had changed: the German Chancellor, Angela Merkel, stood as the only woman, in the front row, surrounded by her male counterparts¹.

Yet from the outset, the EU has been in a position to influence gender balances within Member States. The Treaty of Rome, negotiated and signed by men, nevertheless contained a provision ensuring equal pay for men and women (Article 119, EEC). Since then, the EU has undeniably become a key player in the development of equal treatment between the two sexes (Kantola 2010).

1. In 2013, Angela Merkel was flanked by four female colleagues: Helle Thorning-Schmidt (Denmark), Alenka Bratusek (Slovenia), Dalia Grybauskaitė (Lithuania) and Laimdota Straujuma (Latvia).

In 2014, then, after more than half a century of developments, has the equality so strongly promoted in the legislation and rhetoric of the European institutions become a reality, or is it still a myth? We shall see that despite extensive Community legislation, strategies and financial instruments, the objective of equality is far from being met.

The first section of this chapter describes the various stages in the development of the EU gender equality policy. A second section gives an overview of the binding and non-binding Community instruments aimed at ensuring and promoting equality. Then, in a third section, we assess the effectiveness of these instruments, analysing the current situation of men and women with respect to labour market participation, unemployment, poverty and remuneration. The following section focuses particularly on three problems identified as priority issues within the EU: violence against women, the gender pay gap, and the balanced representation of women and men on the boards of listed companies. Other issues, such as reconciling working and family life, or psychological and sexual harassment, are also key aspects of the study of gender equality. Since we can not, however, cover all areas, we have chosen not to address these issues in this chapter, but rather to refer the interested reader to appropriate literature. A final section contains the conclusions to be drawn from this situation of persisting inequality.

1. Gender equality in the EU: origins and doctrine

The EU's gender equality policy developed in three stages: an initial 'dormant' stage, a second 'awakening', and a third stage of 'constitutionalisation' of the principle of gender equality (Bain and Masselot 2012).

Originally, Article 119 of the Treaty establishing the European Economic Community (EEC) (1957) was the only provision setting out the principle of equal pay for men and women for equal work or work of equivalent value. Its purpose was strictly economic: to eliminate distortions of competition between companies established within the Community. France, whose legislation guaranteed equal pay between

men and women², was concerned that the existence of a cheap female labour force in other Member States could put the French economy and companies at a disadvantage (Van der Vleuten 2007). Article 119 EEC, referring only to equal pay for equal work, was seen as a simple declaration of intent, of no particular import, and was even compared by Hoskyns to a ‘Sleeping Beauty’ (Hoskyns 1996).

In the 1970s, gender equality policy gained considerably in importance, thanks to the active involvement of the Court of Justice of the European Communities (CJEC; CJEU since the entry into force of the Treaty of Lisbon). Given the social climate of the time, equal pay was at the top of the political agenda. The famous *Defrenne*³ judgments (1971, 1976 and 1978), challenging the employment conditions applying to air hostesses working for the Belgian airline Sabena, helped to activate Article 119 EEC. In these rulings, the Court held that Article 119 EEC has horizontal direct effect, is a fundamental right, and has a dual purpose: to avoid competitive disadvantages within the Community for companies which respect the principle of equal pay, and to contribute to the improvement of living and working conditions⁴. This period was characterised by the use of the concept of formal equality⁵, and by a ban on discrimination in the labour market. Structural inequalities, however, were not addressed (Kantola 2010).

The Treaty of Amsterdam (1997) changed the Community approach by establishing the concept of substantive equality. The addition of Article 13 EC (Article 19 TFEU), which made it possible to adopt a directive on gender equality outside the workplace, symbolises this new broader

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2. The preamble to the Constitution of the Fourth Republic (1946) states solemnly that: ‘The law guarantees women equal rights in all areas to those of men’. The preamble then refers to this principle as ‘the foremost of the political, economic and social principles necessary in our time’.
 3. Judgment of the CJEC of 25 May 1971, *Defrenne/ Belgian state*, C-80/70, Rec.I-4445; Judgment of the Court of 8 April 1976, *Defrenne/ Sabena*, C-43/75, Rec. I- 455; Judgment of the Court of 15 June 1978, *Defrenne/ Sabena*, C-149/77, Rec.I- 1365.
 4. Later, in the *Deutsche Post* judgment (2000), the Court held that the economic aim was secondary, since the principle of equal pay was first and foremost a fundamental individual human right: Judgment of the CJEC of 10 February 2000, *Deutsche Telekom*, C-50/96 Rec. I-743.
 5. The ‘formal equality’ approach is based on ‘individual justice’ and the ‘principle of merit’. It focuses on equality for individuals, formal neutrality and procedural justice. The ‘substantive’ approach focuses on the characteristics and (dis)advantages of a group, the impact of the group, actual results, substantive equality and the desired outcomes (De Vos 2007).

approach to equality. This Treaty promoted gender equality as one of the central tasks of the Union (Article 2 EC), and introduced the concept of ‘gender mainstreaming’, requiring the European legislator to take account of the principle of gender equality when drafting and implementing all legislation (Article 3 EC). Article 141(4) EC (Article 157(4) TFEU) allows positive action measures providing for specific advantages for the underrepresented sex in working life⁶. These provisions were confirmed in the Treaty of Lisbon (2009). New areas of action were also opened up by Articles 82 and 83 TFEU, which would act as a legal base for two directives adopted in 2011 and 2012 on the protection of victims and combating trafficking in human beings (cf. above).

The Amsterdam and Lisbon Treaties changed the political situation: in the area of gender equality, it was now time to be proactive, rather than reactive. Gender equality was no longer exclusively an issue for women, but part of the general socio-economic and structural struggle against inequalities (Bain and Masselot 2012).

The European Union Charter of Fundamental Rights (2000) establishes gender equality as a fundamental right, banning any discrimination notably on the grounds of sex (Art. 21). It recognises the right to gender equality in all areas, allows for the possibility of positive action (Article 23), and sets out rights relating to the reconciliation of family and working life (paid maternity leave and parental leave). Since the entry into force of the Treaty of Lisbon, the Charter has become a binding list of fundamental rights (Art. 6(1) TEU), addressed to the EU institutions and bodies and to Member States when these are implementing Union law (Art. 51(1) of the Charter). Some authors have expressed scepticism as to the legal consequences of the Charter in the area of gender equality, given the limited scope of the gender equality provisions, the restricted legal effect of the Charter itself and the mixed reactions to it in several Member States (Ellis 2010). The *Küçükdeveci*⁷ (2010) and

6. Positive actions are measures granting a specific advantage to the underrepresented sex in working life, aiming to eliminate or offset the damaging effects of behaviour and structures based on a traditional concept of the distribution of roles between men and women in society. They include the setting of targets, even of quotas, for hiring and promotion, the preferential granting of childcare places to female workers, etc. (Burri and Prechal 2010).

7. CJEU judgment of 19 January 2010, *Küçükdeveci*, C-555/07, Rec. 2010, I-365.

*Test-Achats*⁸ (2011) judgments, however, in which the Court of Justice of the European Union (CJEU) refers in its arguments to the equality provisions in the Charter, would seem to contradict this impression.

2. European instruments for implementing gender equality

European gender equality policy uses both ‘hard law’ and ‘soft law’. ‘Hard law’ refers to legally-binding statutory or regulatory norms, the respect of which may be imposed. ‘Soft law’ refers to provisions that are not mandatory, and respect of which may not be imposed, but which are based on the power of persuasion and on the spread of good practice and convergence objectives.

2.1 Hard law: treaties, directives and case law

Under the Community legal framework, treaties and directives must be complied with. This framework, largely concerned with regulation of the employment market and related areas, also includes the judgments handed down by the CJEU.

Compliance with the Treaties

As referred to in the first section, the Union from the outset considered equality between men and women a fundamental principle. Equally, the idea of gender equality is deemed to be at the heart of all its activities.

Implementing Community directives

Directives are important tools for achieving equal treatment of men and women. A plethora of directives banning gender discrimination was adopted from the 1970s onwards, for two essential reasons. The first of these was the inability, or lack of resolve, of certain Member States to implement Article 119 EEC on 1 January 1962. Implementing the equal pay principle therefore became a priority of the social programme set up in 1974, encouraging Member States to adopt a directive on equal pay

8. CJEU judgment of 1 March 2011, *Test-Achats*, C-236/09, Rec. 2011, I-773.

between men and women (Burri and Prechal 2010). Secondly, once the CJEC (now CJEU) had established the direct effect of Article 119 EEC, many cases were referred to the Court, and showed clearly how difficult it was to consider pay separately from other aspects of working conditions, including the rules applicable to retirement pensions (Kantola 2010).

The main directives on equal treatment of men and women essentially concern employment and related areas: pay, access to employment, training and promotion, and working conditions; social security; parental leave; protection of pregnant workers, etc. According to the European Commission, the purpose of these measures is to create uniform rules by doing away with obstacles to women's participation in the labour market, and by combating stereotypes. While this objective is laudable, the idea of an altruistic Commission guided solely by a desire to improve gender equality must be taken with a grain of salt. According to Stratigaki (2004), these measures, defined as gender equality policies, are in fact designed to create a more flexible labour force, by incorporating flexible and temporary work carried out by women. The European efforts to increase gender equality are merely, in this view, a way of reformulating neoliberal internal market principles to make them more attractive to public opinion.

Not until 2004 was a directive finally adopted on gender equality outside the workplace. Due to the hostile political context, there were many doubts as to the adoption of Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services: it was finally adopted, after a long and arduous process (Masselot 2007). With a view to simplification, several 'equality' directives were repealed in 2006, and their content transferred to Directive 2006/54/EC on the implementation of equal opportunities and equal treatment of men and women in matters of employment and occupation. The 'maternity' directive (92/85/EEC) and the directive on parental leave (92/85/EC) were excluded from this consolidation exercise⁹. This exclusion was strongly criticised: there were objections to the fact the provisions relating to pregnancy and maternity could be seen as exceptions to be dealt with separately from

9. The exclusion was due to the different legal base of these two directives: one was based on health and safety, the other came from the social partners.

the issue of gender equality. This exclusion, combined with that of the rules relating to parental leave, seemed to undermine the concept of reconciling working and family life¹⁰ (Burrows and Robinson 2007).

Prechal and Burri have studied how gender equality provisions have been transposed into national legislations. Whilst Member States have indeed implemented Community legislation in this area, an analysis reveals a number of weaknesses. As the authors comment: ‘A correct transposition of the EU rules into national law is not enough (...) what also matters is that the transposed rules are applied in everyday life and are effectively enforced through the appropriate mechanisms (...) In other words, law in the books must also be law in everyday practice. Unfortunately the law in the books and law in practice still differ, sometimes dramatically’ (Prechal and Burri 2009:33).

The case law of the Court of Justice of the European Union

The CJEU has undeniably contributed to the progress made in gender equality. Taking an activist approach in the 1970s, it handed down essential judgments based on scanty legal provisions, interpreting these generously and extending the substantial protection offered by Community law to many areas, including pregnancy, positive action and occupational pensions. It strengthened application of the law by developing the principle of direct effect of directives¹¹, the concept of indirect discrimination¹², and that of the reversal of the burden of proof¹³, all principles codified in the form of directives (Masselot 2007).

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10. The directive on equal treatment for self-employed workers and for their spouses participating in the activity (86/613/EEC) was also excluded, since it applied to a specific category of people requiring a specific approach. So was the directive on equal treatment for men and women in matters of social security (79/7/EEC) due to a lack of political consensus.
 11. The principle of direct effect enables private individuals to invoke a European rule directly before a national or European court.
 12. Indirect discrimination occurs where an apparently neutral provision, criterion or practice would put persons of one sex at a particular disadvantage compared with persons of the other sex, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary (Art. 2(1b)), of Directive 2006/54/EC).
 13. When persons consider themselves wronged because the principle of equal treatment has not been applied to them, and establish before a court or other competent authority facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment (Art.19(1) of Directive 2006/54/EC).

An increasing number of cases has been referred to the Court since 1975. Lavena and Riccucci (2012) have listed 205 judgments handed down between 1971 and 2008. Of these judgments, 29.3% related to application of the principle of equal treatment in the area of social security, 26.3% to its application to employment, and 21.5% to equal pay. In 95% of cases, the Court was responding to questions referred for a preliminary ruling¹⁴: it essentially clarified to national courts how Community provisions should be interpreted, and sanctioned Member States for non-transposition or incorrect transposition of Community provisions into their own legislation. In total, 133 (64.9%) decisions out of 205 cases were in favour of women.

2.2 Soft law: charter, pact and strategy

Together with the standard legislative and binding legal instruments, other 'soft law' instruments have gradually taken on more importance in the area of gender equality. As well as strategic programming tools covering particular issues, there are also financial instruments and a European agency. In the next sections we shall refer to the most recent of these (Bellal *et al.* 2011).

2.2.1 Strategic programming instruments

The Women's Charter (2010)

The European Commission strengthened its commitment to gender equality by presenting a 'Women's Charter' (2010), in which it undertook to build a gender perspective into all policies in the next five years, as well as adopting specific measures to promote equality between men and women. The Charter focuses on five areas of action: equality on the labour market and equal economic independence for women and men, reducing the gender pay gap by 2015, equality in decision-making, dignity, integrity and an end to gender-based violence, and gender equality beyond the European Union (European Commission 2010a).

14. A national court may refer a question to the Court of Justice of the European Union for a preliminary ruling on the interpretation or validity of Community law in the particular case being examined by this court.

The Commission's Strategy for equality between women and men 2010-2015 (2010)

This Strategy provides a global framework allowing the Commission to defend gender equality. It combines specific measures and the building of an equality perspective into all EU policies and includes a series of actions based on the five priorities identified in the Women's Charter. The Strategy emphasises the contribution made by equality to economic growth and sustainable development and defends the creation of a gender equality dimension in the Europe 2020 strategy. Progress made is presented in a specific annual report (European Commission 2010b). Contrary to usual practice since 1982, there is no specific equality financing programme linked to this strategy¹⁵.

European Pact for equality between women and men for the period 2011-2020 (2011)

The European Pact for gender equality for the period 2011-2020 is a renewal of the first Pact adopted by the European Council in 2006. In the context of EU 2020, it emphasises the need to do away with obstacles to women's participation in the labour market, in order to meet the objective of a 75% employment rate for women and men aged between 20 and 64 (by eliminating all forms of discrimination, promoting a better work-life balance, etc.). This set of instruments is intended to integrate the gender perspective into all policies carried out at European and national levels, by including this aspect in the impact assessments carried out before new policies are developed (European Council 2011). The weak point of this Pact is the lack of precise, quantified targets.

2.2.2 Other instruments

The financial instruments 'Progress' and 'Daphne'

As well as the European Social Fund, which has gender equality as one of its 18 investment priorities for 2014-2020, EU financial actions in the area of equality draw on the Community programme for employment and social solidarity (Progress) (European Parliament and Council of

15. The first multiannual action programme to promote gender equality was launched in 1982. The fifth action programme (2001-2005) was the last to focus exclusively on promoting gender equality. It was followed by the PROGRESS action programme (2007-2013), in which equality between women and men is only one of the objectives.

the European Union 2006). Gender equality is one of the five areas of action of this programme: 12% of its budget was allocated to this area between 2007 and 2013.

Daphné III (European Parliament and Council of the European Union 2007) is an EU programme designed to prevent and combat violence towards children, young people and women, as well as to protect victims and groups at risk. Its budget for 2007-2013 was 116.85 million euros.

As part of its financial programming exercise for 2014-2020, the European Commission presented a proposal for a regulation setting up a programme on 'Rights and Citizenship' for 2014-2020 (European Commission 2011). The activities carried out previously under Section 4 ('Antidiscrimination and diversity') and Section 5 ('Gender equality') of the Progress programme and the Daphne III programme will be continued and developed further in this new programme. The fund, which will have a budget of 439 million euros, will be managed by DG Justice.

The European Institute for Gender Equality

In December 2006, the European Parliament and the Council created a European Institute for Gender Equality, the general aim of which is to promote gender equality by integrating the gender perspective into all European and national policies. The institute fights against discrimination, raises awareness of gender equality issues, and provides technical assistance to the EU institutions by collecting, analysing and distributing data and methodological tools¹⁶.

3. The real gender equality situation: current situation and impact of the crisis

This section aims to give an overview of the situation of men and women, with regard to employment and unemployment rates, the pay gap, poverty risk and the situation regarding women in decision-making bodies.

16. <http://eige.europa.eu/>.

Employment and unemployment rates

Until 2007, the employment rate for women in the EU-27 increased regularly, reaching 62.8% in 2007, compared to 77.9% for men. The crisis resulted in a sudden halt to this trend and a clear fall for men: in 2012, the male employment rate fell to 74.6%, whilst the rate for women stagnated at 62.4%. In 2012, the unemployment rate for women was similar to that for men (10.8% compared to 10.6%), where female unemployment rates are usually above those of men. However, this closing of the gap between men and women at a time of crisis did not signify a reduction in gender inequality. It was not such good news as it might seem, since the narrowing of the gap was due to a deterioration of the situation for men rather than an improvement in the situation for women.

At the beginning of the crisis, the structure of employment across the various sectors of activity protected women's jobs well, since they were over-represented in the service sector, including in public sector jobs, and under-represented in the typically male sectors (production, manufacturing, construction and finance), which were the first to be hit by the crisis (Bettio *et al.* 2013a). After this initial phase, the effects of the lasting crisis spread to the whole population. Fiscal austerity measures led to job cuts in the public sector and in the sectors dependent on subsidised employment, and this had a significant direct impact on female employment (Karamessini and Rubery 2013).

Since flexibility of working time was used as an adjustment variable during the crisis, the hardest-hit group were initially 'typical' workers, usually male, rather than atypical workers, more frequently female. Although the number of men working part-time increased to a level of 8.4% of salaried workers in 2012, most part-time workers were still women (32.1% of female workers in 2012). There was also a significant increase in involuntary, rather than chosen, part-time work from the beginning of the crisis, with the vast majority of new jobs created being part-time jobs (European Commission 2014a). Women can see no improvement in their prospects of leaving part-time work, and are facing tougher competition from men.

The prospects for young people are a cause for concern. In 2011, nearly 17.5% of young women and 13.4% of young men were totally absent from the labour market, without occupation and without a job, not involved in any training or study programme. Nevertheless, most young

people in temporary or part-time work are women, who have a greater need to begin their working lives combining temporary and part-time work (Plantega *et al.* 2013).

The deterioration of the labour market resulting from the crisis therefore affected women and men differently, since certain consequences affected women specifically: maternity rights and advantages were not always fully respected, and greater discrimination against pregnant women was noted in some Member States (Leschke and Jepsen 2011).

The pay gap: always to the detriment of women

In 2011, women in the EU received an hourly salary on average around 16.4% lower than that of men (European Commission 2014b), although figures varied greatly between the individual countries. The pay gap was less than 10% in Italy, Luxembourg, Malta, Poland, Romania and Slovenia, was close to 20% in a group of countries including Finland, the United Kingdom, Germany, Austria and the Slovak and Czech Republics, and was as high as 30% in Estonia (OECD 2012). How could such a substantial pay gap persist for so long in spite of all the measures taken to abolish it?

The gender pay gap is a complex phenomenon resulting from several intimately related factors (Ghailani 2009). Besides differences in individual characteristics (age, education, professional experience), the predominance of women in part-time work is a key factor. Part-time jobs are often concentrated in sectors and professions with lower full-time pay levels and more limited career opportunities, all of which reinforces the pay gap (Plasman and Meulders 2010). The horizontal and vertical barriers faced by women at work are another important factor in inequality. Those sectors in which women are over-represented (health, education etc.) have lower pay levels than those applicable in mostly male sectors (construction, transport, etc.). Within individual sectors, men are more likely than women to be in positions of responsibility with higher pay (Busch and Holt 2011). The effect of non-paid work bringing up children, the under-valuing of women's skills and abilities, and wage structures all contribute to the pay gap (Smith 2010). As well as these persisting factors, which provide some explanation for the gap, there are also situations that can only be explained as direct or indirect discrimination: either women are not being paid the same as men despite doing identical work or work of equal value, or they are the victims of practices that may

not have been originally designed as discriminatory but that result in unequal treatment of men and women (Foubert *et al.* 2010).

Although, overall, the pay gap has closed slightly over the last decade, it is still increasing in some countries such as Hungary and Poland (OECD 2012). The reasons for the overall reduction are still being discussed, but a number of hypotheses have been put forward: reductions in top-ups (rewards and bonuses) received in addition to the basic salary by male workers; a change in the sectoral breakdown of the labour force, the setting up of political programmes to reduce the pay gap in a number of Member States; and the increasing proportion of highly-qualified women (European Commission 2012a). There is a risk, however, that fiscal austerity, including a pay freeze and pay cuts in the public sector, will reverse this trend. The differing impact of the crisis on employment for women and men is also helping to reduce the pay gap, but as a result of reduced pay for men rather than an increase in women's remuneration, in a sort of downward convergence.

The consequences of pay and professional discrimination continue to affect women even after the end of their working lives. At the end of their respective careers, the gap between women's and men's pensions is far greater than the pay gap, as high as 39% (2010). Whilst this gap is essentially due to the large number of women who work part-time or who have taken time out of work, the pension system can also reproduce, exacerbate or attenuate the gender differences seen in the area of employment. In most Member States, a considerable proportion of this gap cannot be explained by differences in observable characteristics of men and women (careers, education, age, marital status, etc.). Understanding these causes, then, is still a major political challenge (Bettio *et al.* 2013b).

Women more at risk of poverty

Within the EU, women run a higher risk of poverty or social exclusion than men. In 2011, 55.7 million men experienced poverty or social exclusion, compared to 63.8 million women. Lone parent households, usually women, are particularly affected. This risk of poverty is also higher for the oldest women (older than 75), those not in active employment or the unemployed. These various risks are even greater for migrant women (European Commission 2013b). If we bypass the gender bias created by measuring poverty in terms of households and

consider individual rather than aggregated income, the risks of poverty and in-work poverty are seen to be far higher for women than for men (Peña-Casas and Ghailani 2011).

Between 2008 and 2010, the crisis slightly reduced the gaps between men and women, since it sped up the deindustrialisation process, historically associated with more male employment. Social transfers and income redistribution mechanisms attenuated the potential of the crisis to increase poverty and also helped to reduce the gap in poverty levels between women and men (Bettio *et al.* 2013a). Nevertheless, the constraints imposed by fiscal austerity are a real threat to the level and quality of social protection and to gender equality. Although the new budgetary rules are not automatically coupled with a reduction in social expenditure, it is clear that in times of crisis, social expenditure is the first to be cut (OECD 2011). In the context of the Euro Plus Pact and the emphasis on the sustainability of public finances, health and pension systems are in the firing-line, as are all other social protection mechanisms, and this leads *de facto* to a significant reduction in social benefits (Klarzer and Schlager 2013).

Women in decision-making bodies: conspicuous by their absence

Women are still under-represented in decision-making bodies, both in companies and in society. This difference in opportunities to rise to positions of greater responsibility is now commonly referred as the 'glass ceiling', which prevents women from reaching the highest positions, regardless of their abilities.

Over the last decade, the proportion of women and men in the boardroom has scarcely progressed in Europe. The management boards of the largest European companies are still dominated by men. In 2012, the proportion of women represented on the boards of the largest companies listed on stock exchanges in the EU was only 13.7%, compared with 11.8% in 2010 (European Commission database), and only 3% were chairpersons (European Commission 2012b).

In politics the situation is not much better. In May 2013, only 27% of ministers in Europe were women, although some Member States (France, Denmark and Finland) claim that they are aiming for parity. The percentage of women MPs is equally low: only 27% of national parliamentarians are women. Sweden, Finland and Spain stand out with

40% of MPs being female; at the other extreme, however, the Hungarian parliament has fewer than 10% women (European Commission 2013c).

4. The major challenges to be overcome

The description of the situation given in the previous section clearly shows the major challenges that remain in the area of gender equality. The perception of European citizens is also a good indicator of the challenges to be overcome. A Eurobarometer flash survey¹⁷ carried out in 2012 shows that while most Europeans think that gender inequalities have tended to decrease in the last ten years (60%), more than half feel that that they are a serious problem in their country (52%). The most important problem, in the majority view, is violence against women (48%), more so than the gender pay gap (43%). This pay gap is seen as a serious problem by a clear majority of Europeans (69%), and an even greater majority sees the gap as unjustified (85%). With regard to the access of women to managerial posts, 88% of respondents felt that women should be equally represented in corporate managerial posts. In total, 75% of Europeans were in favour of legislation being adopted, as long as this took account of qualifications and did not automatically favour either gender¹⁸.

Combining working and family life is also a major issue, as is psychological and sexual harassment. Due to a lack of space we shall not address these issues here, but this does not in any way detract from their importance in understanding gender inequality¹⁹.

4.1 Eradicating violence against women: an absolute priority

Gender-based violence against women is violence that is directed against a woman because she is a woman or that affects women disproportionately. It is a manifestation or result of discrimination against

17. Eurobarometer flash survey 341 (2012) Gender inequalities in the EU (http://www.inequalitywatch.eu/IMG/pdf/rapport_fr.pdf).

18. Eurobarometer special survey 376 (2012) Women in decision-making positions (http://ec.europa.eu/public_opinion/archives/ebs/ebs_376_fr.pdf).

19. For a detailed overview of the issue of reconciling family and working life, cf., in particular, EIGE (2011), cf. FRA (2014) and Eurofound (2010).

women and includes all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering (European Council 2012).

Using this definition, an estimated 13 million women in the EU are victims of physical violence: one in every twenty women has been raped at some time since the age of 15; 18% of women have experienced some form of stalking since the age of 15. Half of women in the EU (53%) avoid certain situations or places for fear of physical or sexual attack. Around 12% of women – i.e., 21 million women in the EU – report that before the age of 15 they suffered a form of abuse or a sexual incident of some kind perpetrated by an adult. These shocking figures, however, underestimate the real situation experienced by women in Europe. The survey carried out at the request of the European Parliament and the EU Council by the EU's Fundamental Rights Agency (FRA) on violence against women shows that most women who are victims of violence do not report these incidents either to the police or to a victims' association. Most women who are victims of violence never contact the judicial system, nor any other organisation (FRA 2014).

This violence incurs significant direct (care and support to victims, legal services, etc.) and indirect costs (loss of productivity for the economy, human suffering, etc.). Investments in combating violence against women can thus bring about a reduction in public spending and an increase in productivity, while also reducing human suffering. The whole of society, therefore, benefits in terms of sustainable development and social cohesion.

Under the Spanish presidency of the EU, the European Council adopted conclusions on the eradication of violence against women, and asked the European Commission to develop a European strategy to prevent and combat domestic violence (European Council 2010a). Two successive EU Council presidencies (2002) commissioned studies to achieve a better understanding of the issue: one on measures taken to combat violence against women in the EU Member States²⁰, the other

20. 'Good practice guide to mitigate the effects of and to eradicate violence against women' (http://www.eurowrc.org/01.eurowrc/05.eurowrc_es/ES_SPAIN/EN_Spain-Good%20Pratice%20Guide%20violence%20women.pdf).

on indicators²¹. The Cyprus presidency (2012) chose to concentrate on the issue of support services for victims of domestic violence (European Council 2012).

The European Commission undertook in its Women's Charter (2010) to adopt measures to combat domestic violence. In its gender equality strategy 2010-2015, moreover, it refers to gender-related violence as one of the main problems to be solved in order to reach true gender equality. Support has taken a number of forms: 'zero tolerance' awareness-raising campaigns, exchanges of good practice, conferences, cooperation assistance under the 'Daphne' programme, and the operational funding of European networks such as the European Women's Lobby and the Women Against Violence Europe (WAVE) network (Kantola 2010). Contrary to the plans announced in 2010, no proposals for legislation on violence have been made, although the funds are available, and preparatory studies on harmonising legislation were carried out in 2008. More attention is being given to the sensitive issue of female genital mutilation. In terms of legislation, the Commission adopted the 'victims' package in 2011, implementing the Stockholm Programme 2010-2014. This programme sets out the criminal legislation and other support measures necessary to protect crime victims at EU level (European Council 2010b). When female victims of violence move within the EU, they currently receive judicial protection by virtue of Directive 2011/99/EU on the European protection order in criminal matters (European Parliament and Council of the European Union 2011) and Directive 2012/29/EU, establishing minimum standards on the rights, support and protection of victims of crime (European Parliament and Council of the European Union 2012). This latter text applies to victims of crime and refers in particular to gender-based violence.

Most Member States have implemented National Action Plans (NAPs) to combat violence, most of which consider violence against women an issue of human rights and gender equality. These NAPs generally concern the training of key players, preventing and changing violent behaviour and support to victims. Sweden, Spain and the United

21. 7 indicators were established: profile of female victim of violence; profile of male perpetrator; victim support; measures addressing the male perpetrator to end the circle of violence; training of professionals; State efforts to eliminate violence against women, and evaluation.

Kingdom no longer had NAPs in 2013 (EWL 2013). The Member States have also adopted legislation punishing acts of domestic violence against women; however, only Spain, France, Portugal and Sweden specifically, in their criminal codes, define domestic violence against women as a form of gender-based violence. Within the EU, there are big differences between legal systems in terms of the rules on criminalisation and protection measures. This has led the European Institute for Gender Equality (EIGE) to the distressing conclusion that: ‘domestic violence against women remains a hidden, under-reported and deeply traumatising act of violence. It is not always taken seriously by their communities or the authorities, making women and girls more vulnerable to violence, and, in some cases, murder’ (EIGE 2013: 6).

In the light of this situation, recommendations have been made and suggestions for future action put forward, such as the inclusion in future EU gender equality strategies of new forms of violence, or newly recognised forms such as stalking or abuse linked to the use of new technologies. Other proposals include EU accession to the Council of Europe’s Istanbul Convention (2011) on preventing and combating violence against women and domestic violence²²; an undertaking by the EU and the Member States regularly to collect data on different forms of violence against women; and the taking into account at European level of the impact of violence against women in the areas of employment, education, health and information and communication technologies (FRA 2014, EIGE 2013).

4.2 The pay gap: the fundamental challenge

The ‘gender pay gap’²³ is the most significant sign of gender inequalities on the labour market. After more than 40 years of equal pay legislation, the gap remains in all Member States, irrespective of their levels of

22. The Istanbul Convention is the first legally-binding regional instrument in Europe thoroughly addressing the various forms of violence directed against women, such as psychological violence, physical violence, sexual violence and sexual harassment. The Convention entered into force after the 10th ratification. By the end of 2012, 15 European Union Member States had already signed it.

23. The unadjusted gender pay gap represents the difference between average gross hourly earnings of male paid employees and of female paid employees as a percentage of average gross hourly earnings of male paid employees.

female employment, their social protection model or their legislative progress on gender equality. Reducing the pay gap has long been a priority for all the EU institutions.

Under the auspices of the European Employment Strategy (EES), since 1997, combating pay inequalities has become an essential factor in the efficient use of female human resources in Europe and in attaining sustainable employment rates. The European Council's 2003 decision on the employment guidelines introduced a new objective to be met by 2010: 'a substantial reduction in the gender pay gap in each Member State, through a multi-faceted approach...' (Council of the European Union 2003). Gender equality in general, and in the area of pay in particular, has nevertheless received less emphasis in the EES since the Employment and Growth Strategy (2005-2010), and has almost entirely disappeared in the new Europe 2020 strategy (Peña-Casas 2013).

In its 2007 communication on tackling the pay gap between women and men, the European Commission proposed a series of actions: better enforcement of existing legislation, account to be taken of the gap in employment policies, and exchange of good practices between Member States (European Commission 2007). Eliminating the pay gap through legislative and non-legislative measures is a key objective of the 'European Commission's 'Gender equality strategy 2010-2015'', and is necessary to meet the objectives of the Europe 2020 strategy.

In 2013, the Parliament called upon the Commission to support Member States in reducing the gender pay gap by at least five percentage points per year, with the aim of eliminating the gender pay gap by 2020, and to revise Directive 2006/54/EC (European Parliament 2013a).

This issue was also a priority for the European social partners. The 'Framework of actions on gender equality', adopted in March 2005 by the European social partners, aimed in particular at reducing the gender pay gap. This framework is structured around four priorities: addressing gender roles, promoting women in decision-making, supporting the work-life balance and tackling the gender pay gap. These four priorities have a direct and indirect impact on equal pay (ETUC *et al.* 2005). The social partners encouraged equal pay at national level by

means of awareness-raising activities and training measures, the publishing of studies, etc. (ETUC *et al.* 2009). This framework covered the period 2005-2009 and was not renewed thereafter.

Current measures and provisions are still insufficient. Quite clearly, although legislation is vital, it is not enough in itself either to close the gender pay gap, or to tackle the structural factors on the labour market which account for this gap. Closing the gender pay gap, therefore, is still a real challenge to be overcome.

In this context, the Commission, to help employers in their efforts to tackle the causes of the gender pay gap, organised an initiative in 2012 and 2013 called 'Equality Pays Off'. The purpose of this initiative was to make companies more aware of the equal pay issue and how equal pay could act in their interests, improving access to the potential female labour force, given demographic trends and increasing skills shortages. On 5 March 2011, it launched the first European Equal Pay Day²⁴. It also underlined the importance of setting up non-discriminatory systems for job evaluation and classification, which could contribute to a better implementation of the equal pay principle in practice (European Commission 2013d) and recommended that Member States encourage wage transparency in companies and enable employees to obtain information on pay. Member States should ensure that employers report on pay levels and should promote the development of gender-neutral job classification systems (European Commission 2014a).

National governments and social partners should, moreover, develop policies to close the gender pay gap. Thus the law in France, Cyprus, Austria and Italy expressly ensures that the job evaluation and classification systems used to determine pay levels apply to both men and women without discrimination. In other Member States, however, no such specific provision exists. In Belgium and the Netherlands, collective agreements guarantee the non-discriminatory evaluation of jobs. Certain Member States (Belgium, Luxembourg, Austria) have also drawn up guides and check-lists on job evaluation and classification, making it possible to assess jobs objectively without any gender bias.

24. Equal pay days also took place on 2 March 2012, 28 February 2013, and 28 February 2014.

Portugal, Finland and Lithuania have adopted gender equality strategies that include provisions to tackle the gender gap. In Estonia, an action plan to reduce the gender gap was adopted in 2012. It sets out five main lines of action, including the analysis of organisational practices and pay systems in the public sector. The equality action plans and audits allow companies to measure the progress they have made in the area of gender equality and equal pay. In certain cases, the national legislature requires that such plans be implemented. In other Member States, implementation is voluntary²⁵.

4.3 Balanced representation on corporate boards: the heated debate on quotas

Women make up around 45% of the working population in the EU (Eurostat 2011). Although they are often more highly-qualified than men (higher education), the percentage of women in the workplace declines in proportion to the level of responsibility of positions in undertakings or administrations. They have worse career prospects and their qualifications are under-used. In 2012, women occupied on average only 13.7% of seats on the highest decision-making bodies of companies (management boards or supervisory boards) of the main publicly listed companies in the Member States²⁶.

This under-representation of women is traditionally attributed to both individual and organisational factors. The main argument is that not enough women possessing the required human capital (skills and experience) are available to occupy management functions. It is said that they lack ambition and do not have the necessary 'leadership' qualities. Surveys, on the contrary, show that women are increasingly highly qualified and are present in ever larger numbers in the pool of potential candidates for leadership from which board members are

25. On 22 April 2012, Belgium adopted a law to tackle the gender pay gap. This law requires differences in pay and in the cost of labour between women and men to be reported in companies' annual social balance sheets. These annual reports will be sent to the National Bank, and the information will be made public. Law of 22 April 2012 to combat the gender pay gap, Belgian Official Gazette, 28 August 2012.

26. European Commission database on women and men in decision-making, January 2012 (http://ec.europa.eu/justice/gender-equality/gender-decision-making/database/index_en.htm).

selected²⁷ (Vinnicombe *et al.* 2008). The recruitment process for such high-level posts is still a problem, since it is based on the use of headhunters, personal recommendations, individual approaches and an influential informal network (social capital). Finally the term ‘professional homosociability’ has been used to explain that men prefer to recruit men.

There are many economic arguments in favour of strengthening the female presence on management boards. McKinsey (2010) established a positive correlation between the presence of women in positions of responsibility and the organisational and financial performance of a company, as well as its quality of governance and company ethics. From a macroeconomic viewpoint, strong economies and sustainable pension regimes depend on a higher employment rate for women and a greater reward in terms of pay for their work (OECD 2008).

Within the EU, the question of the male-female balance in decision-making posts moved to the heart of the political debate in 2010, when the Commission adopted its new strategy for equality between women and men. It spoke of ‘targeted initiatives to improve the representation of women in positions of responsibility’. In 2011, Viviane Reding, Commissioner for Justice, Fundamental Rights and Citizenship, launched the ‘Women on the board pledge for Europe’, calling upon publicly listed EU companies to enter into a voluntary commitment to reach the target of 30% female members on their highest decision-making bodies (management or supervisory boards) by 2015, and 40% by 2020, by actively recruiting qualified women to replace outgoing male board members²⁸.

The public consultation organised in the wake of this initiative in 2012 revealed broad agreement on the urgent need to increase the percentage of women on boards but showed that stakeholders disagreed on the best

27. The ‘European Business Schools: Women on Board initiative’, organised by European business schools to try and increase the number of women on corporate boards, was quick to list more than 7,000 ‘board ready women’, with high levels of qualification, good professional experience and who would be ready to accept a director’s post (<http://www.edhec.com/html/Communication/womenonboard.html>).

28. The Commission Vice-President Viviane Reding presented the ‘Women on the board pledge for Europe’ on 1 March 2011 during a meal with the Chairmen of large publicly listed European companies (http://ec.europa.eu/commission_2010-2014/reding/pdf/p_en.pdf).

ways to produce change: maintaining self-regulation (companies) or setting binding targets (NGOs, trade unions) (European Commission 2012c).

In November 2012, since the calls for self-regulation with a voluntary undertaking by Member States had not produced convincing results, Viviane Reding launched a draft directive intended to significantly increase the representation of women on the board of EU companies listed on stock exchanges, setting a minimum target of a presence of the under-represented sex of at least 40% of non-executive directors. This objective is to be met by 2020, and, in public companies, by 2018. The concentration of European policy on companies listed on stock exchanges is justified by their economic importance and their high profile. The quota is linked to a starting provision, whereby priority is given to a candidate from the under-represented sex in the selection of non-executive directors 'if that candidate is equally qualified as a candidate of the other sex in terms of suitability, competence and professional performance, unless an objective assessment taking account of all criteria specific to the individual candidates tilts the balance in favour of the candidate of the other sex' (Art. 4 (3)). If an unsuccessful candidate challenges the selection procedure, the company must disclose information and must bear the burden of proof (European Commission 2012c).

The Commission's wishes did not receive unanimous support from all Member States, nine of which²⁹ clearly expressed their rejection of this measure in a letter sent to President Barroso and to Viviane Reding: 'We agree (...) that there are still too few women on the boards (...) but we do not support the adoption of legally binding measures (...) at the European level' (Spanneut 2012).

The European social partners were still divided as to the type of measures to adopt. The ETUC issued a position paper in June 2012, emphasising that 'one of the most effective ways to ensure a better gender balance on boards is the introduction of binding measures, with clear targets,

29. Letter signed by the governments of the United Kingdom, the Netherlands, Bulgaria, Latvia, Estonia, Lithuania, the Czech Republic, Hungary and Malta. As well as the nine signatory countries, Germany was also against the idea of a quota imposed at European level.

deadlines and sanctions’ (ETUC 2012: 3). In the view of BusinessEurope, ‘legislative quotas imposed at EU level are not the right way forward to encourage career progression and nominations of women at the top, and do not address the real causes of lower percentages of women in senior and executive positions’ (BusinessEurope 2012).

At national level, France, Italy and Belgium have adopted legislation setting a quota linked to sanctions³⁰. The Netherlands and Spain have also adopted legislation, but their rules are far more flexible (non-binding or with no sanctions attached). The United Kingdom has chosen to set voluntary targets (Selanec and Senden 2011).

The European Parliament adopted the draft directive with a large majority in November 2013 (European Parliament 2013b). The December EPSCO Council took note of the progress report on the work done, which showed that although delegations agreed with the objective of the proposal, they had differing views as to how it could be met (European Council 2013). Some delegations said they would prefer a voluntary solution giving Member States greater leeway to decide on their own strategies. They emphasised that the proposal failed to respect the principles of subsidiarity and proportionality and stated that they did not support the adoption of legally binding provisions in this area at European level (Council of the European Union 2013).

The debate is, therefore, still a tricky one, but it continues...

Conclusions

Substantial gender inequalities remain in 2014. Women still come up against glass walls and ceilings, which prevent them being treated on an equal footing with men.

This does not mean that the EU has done nothing to promote gender equality: on the contrary. There is, indeed, a general consensus among academics that the European institutions have been an important

30. Similarly to Norway, where this type of legislation has led to rapid progress and to a quota of 40%, set in 2003, throughout the country.

catalyst in developing economic, social and political equality for women. Nevertheless, it would be an exaggeration to say that the EU defended a broad interpretation of gender equality right from the outset. Its equality policy, rather, has developed gradually over several decades, taking in new areas and new commitments, particularly with regard to combating violence against women, and going beyond the limited field of discrimination in employment.

However, the Member States still hold the main political levers affecting gender equality, and these States are still divided, even reticent, when it comes to the implementation of effective integrated gender equality strategies. The debate concerning the composition of company boards is a good example of the opposition in some countries, but it also shows the tension that may occur vis-à-vis Europe when it comes to implementing proactive policies. The main issue is the political will of Member States.

Legislation, although vital, is not in itself sufficient to attain gender equality. There is a need for radical change in mentalities and in socio-cultural references in relation to gender discrimination. This change must begin with the general public, since the views of ordinary citizens influence the political priorities of the national authorities that they elect, but there must also be a change of attitude among employers, since they can take direct action to eliminate differences in employment practice. In this context, social dialogue also plays an essential role in encouraging these developments, which, unfortunately, remains a long-term task. True gender equality is still more of a myth than a reality in the EU.

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