

EU Equal Opportunities Policy: Towards a Broader Agenda?

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Mark A. Pollack¹

The European Union has long pursued a policy on equal opportunities for women and men, based originally on Article 119 EEC and the jurisprudence of the European Court of Justice, and more recently on a series of Directives on equal treatment for men and women in the workplace. Yet the impact of EU equal opportunities policy on the women of Europe remains a bone of contention in the scholarly literature. Simplifying an increasingly rich literature, we can say that scholarly “optimists” tend to approach EU equal opportunities policy from mainstream, non-feminist perspectives, and see women essentially as an interest group making use of a new political opportunity structure at the European level. For these optimistic analysts, EU law has expanded the legal “tool-kit” of European women, beginning with Article 119 of the Treaty of Rome, which enshrines the principle of equal pay for equal work for women and men. Beginning in the 1970s, women in the various member states have pressed for their right to equal pay before the European Court of Justice, which has ruled in a series of landmark cases that Article 119 is directly effective in the member states and does indeed confer a legally enforceable right to equal pay. Since the 1970s, moreover, Article 119 has been supplemented by additional Directives on equal pay, equal treatment for women and men in the workplace, the rights of pregnant workers, and, during the 1990s, additional Directives affecting women in areas such as sexual harassment, part-time work, and parental leave (cf. Stone Sweet and Caporaso 1996; Cicowski 1998).

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By contrast, we can also identify a second literature, inspired by feminist theory and far more critical of EU equal opportunities policy. In this view, the European Union in general, and equal opportunities policy in particular, focuses narrowly on women as participants in the workplace, while ignoring the most fundamental aspects of women's inequality in European society. More specifically, the EU conception of "equal treatment" fails to confront the systematic subordination of women in society, and is silent on such fundamental issues as unpaid labor, violence against women, reproductive rights, and a range of other issues which fall outside the EU's definition of women as paid workers (cf. Rees 1998; Hoskyns 1996; Elman 1997; and the essays in Elman, ed., 1996). Even within the narrow spheres of equal pay and equal treatment, moreover, a number of feminist scholars have noted the difficulty of pursuing positive action in favor of women, since all EU legislation must pass through two "needle's eyes": a first "needle's eye" at the level of the Union with its narrow conception of equal opportunities and its need for consensus in the Council of Ministers, and a second needle's eye in the variable implementation of EU legislation in the member states (Ostner and Lewis 1995). In this view, EU equal opportunities policy represents a handful of Directives, most of which represent little or no real advance to most European women, and which in any event adopt a narrow, neoliberal view of women as participants in the workplace.

The starting point for this paper is that both of these conceptions are correct: that is, EU equal opportunities policy has indeed pushed forward with an ambitious agenda of legally enforceable rights for European women, but that it has done so along the comparatively narrow, neoliberal front of workplace legislation.

From this starting point, however, I argue further that the European Union has during the course of the 1990s begun to pursue a broader agenda: in terms of the categories established by Rees (1998), the European Union has moved beyond its previous emphasis on *equal treatment*, to embrace both *positive action* and *gender mainstreaming*, with potentially important consequences for European women and for the European Union as a progressive polity. First, with regard to positive action, the European

Commission in particular has pressed forward with a series of specific, positive actions on behalf of women, both within and outside the workplace, ranging from child care and affirmative action to questions of women in leadership and violence against women. Second, and parallel to these specific actions, the Union has recently adopted an official policy of “mainstreaming” gender issues across all EU policies. Although in its infancy, this policy of gender mainstreaming holds the revolutionary promise of taking women’s issues out of a narrow policy community and inserting the concerns of women across the entire spectrum of EU public policies.

The explanation for this broadened agenda, I argue, can be found in the recent literature on social movements, which emphasizes a combination of political opportunities, resource mobilization, and strategic framing in order to explain the rise of social movements and their impact on policy (cf. McAdam, Macarthy and Zald, eds., 1996; McAdam, Tarrow and Tilly, 1998; and Tarrow 1998). In terms of *political opportunities*, I have argued elsewhere (Pollack 1998) that, despite the difficulties of decisionmaking in the Council and of implementation in the member states, the European Union nevertheless presents a favorable opportunity structure for diffuse interests such as women’s groups. In particular, the EU provides multiple points of access to the policy process, and multiple allies among the European policymaking elite, including: sympathetic member governments in the Council; the Equal Opportunities Unit within the European Commission, which is charged with preparing legislation and action programmes on sex equality issues; the Women’s Rights Committee of the European Parliament, which has acted as a steadfast and often radical advocate on women’s issues; and the European Court of Justice. Furthermore, I will argue below that the political opportunity structure of the European Union became systematically *more* favorable in the 1990s, as a result of the strengthening of the European Parliament in the Maastricht Treaty; the creation of the “third pillar” of Justice and Home Affairs issues; and the accession of three new member states in 1995 with a long-standing commitment to sexual equality. These changes in the political opportunity structure, I argue, explain much of the recent broadening of the

EU women's rights agenda.

Political opportunities, however, are not sufficient to ensure the emergence of a social movement and the achievement of its substantive goals. The ability of social movements to organize and to influence policy, rather, is dependent in part upon *mobilizing structures*, defined as "those collective vehicles, informal as well as formal, through which people mobilize and engage in collective action" (McAdam, McCarthy and Zald 1996: 3). The literature on mobilizing structures first emerged in the early 1970s in response to the challenge from the economist Mancur Olson, who pointed out that large, diffuse groups face a collective action problem, in that rational individuals will generally choose to "free ride" rather than to participate in social movement activities. In their early work, McCarthy and Zald (1973, 1977) argued that the collective action problem could be overcome through the organized efforts of professional social movement organizations (SMOs), which could centrally organize social movement activities and, perhaps more importantly, mobilize resources from sympathetic supporters. Later studies, however, de-emphasized the importance of professional NGOs and the likelihood of finding support from sympathetic elites, and instead focused on the organizational strengths of indigenous communities (McAdam 1982). Today, the literature on mobilizing structures aims at classifying and explaining the adoption of a wide range of formal and informal, centralized and decentralized mobilizing structures, and the ways in which different mobilizing structures can affect social movement success (McCarthy 1996). In the case of the EU, I argue that specific supranational actors--and in particular, the European Commission and the Women's Rights Committee of the European Parliament--form the heart of a transnational network of experts and activists in the area of equal opportunities, and that these networks have succeeded in placing on the agenda a wide range of issues previously beyond the scope of EC policymaking.

Finally, in addition to political opportunities and mobilizing structures, social movement theorists have focused increasingly on the importance of *framing processes*, understood as "the conscious strategic efforts by groups of people to fashion shared understandings of the world and of themselves that legitimate

and motivate collective action” (McAdam, McCarthy and Zald 1993: 6). The concept of framing originated with Goffmann, who defined frames as “‘schemata of interpretation’ that enable individuals ‘to locate, perceive, identify, and label’ occurrences within their life space and the world at large” (Goffmann 1974: 21 quoted in Snow et al.1986:464). Snow and his colleagues first applied the concept of framing to social movements, arguing that social movement organizations (SMOs) may *strategically* frame issues in order to create a sense of injustice among potential SMO supporters, attribute this injustice to systemic factors, and mobilize individuals to participate in collective action (Snow et al 1986, 1992). This emphasis on “collective action frames,” and in particular on so-called “injustice frames,” is appropriate insofar as the dependent variable of one’s study is the emergence of a social movement itself. For our purposes in understanding the origins and adoption of gender mainstreaming, however, we adopt Rein and Schon’s concept of a “policy frame,” defined as “a way of selecting, organizing, interpreting and making sense of a complex reality to provide guideposts for knowing, analyzing, persuading, and acting” (1993: 146), thus influencing an individual’s choice of policy and policy instruments. Simply proposing a new policy frame, however, is insufficient to guarantee acceptance of this frame by the dominant elites within a state or an international organization. Rather, Snow and Benford argue, such new frames must “resonate,” or fit, with the existing frames accepted (and perpetuated) by dominant elites (1992: 137).

In the EU case, I argue, following Sonia Mazey (1998b), that gender mainstreaming has emerged during the 1990s as perhaps the dominant “policy frame” for equal opportunities policy in the European Union. Taken together, therefore, the new political opportunities of the 1990s, the resources mobilized and the networks created by the Commission, and the new policy frame of gender mainstreaming have combined to transform the EU agenda from a narrow focus on women as workers, to a much broader emphasis on gender as a core concern in all EU policies.

The plan of the paper is simple. In Part I, I examine the various specific, positive actions adopted on behalf of women by the European Union in the 1990s, focusing in particular on the EU’s period Action

Programmes; on the debate over “positive discrimination” after the Court of Justice’s *Kalanke* and *Marschall* decisions; and on the new actions taken on women’s issues under the EU’s new Justice and Home Affairs Pillar. In Part II, I introduce the concept of gender mainstreaming, and trace its adoption, and the brief record of implementation, in EU policymaking. In Part III, finally, I conclude the paper with a mixed assessment, namely that the EU has proven capable of addressing a broader women’s rights agenda than feminist theorists have generally argued; but also that, at this writing, the majority of actions undertaken in these areas have taken the form of exhortation, modest financial incentives, and soft law, and that the effects of these new actions on ordinary European women are likely to be felt slowly and unevenly across the member states in the years to come.

I. Positive Action for Equality—in the Workplace and Beyond

In her excellent study of gender in EU education, training and labor market policies, Teresa Rees (1998) makes a useful distinction among three ideal-typical approaches to gender issues: equal treatment, positive action, and mainstreaming. *Equal treatment*, in Rees’ words, “implies that no individual should have fewer human rights or opportunities than any other,” and its application in the EC context has taken the form of the adoption of Article 119 on equal pay for men and women, and the subsequent adoption of a series of Directives on equal pay and equal treatment in the workplace; and it is these Directives which have been activated by women litigants in the member states, and enforced by the European Court of Justice in the many equal-pay and equal-treatment cases since *Defrenne* (Rees 1998: 29). Rees goes on, however, to criticize the equal-treatment approach in terms that are already familiar from the feminist literature on the European Union:

A legal framework providing for equal treatment for men and women is clearly essential; however, this approach focuses on the establishment of rights and procedures rather than on outcomes. One

of the main criticisms of European law on EU [equal opportunities] is that it focuses on issues of equal treatment for men and women as workers, hence it leaves the inequalities rooted in the gender contract [an informal understanding of gender roles in society] largely untouched. In other words, it addresses the symptoms rather than the causes of inequality. As a consequence, it is clearly limited in its potential effectiveness (1998: 32).

Other feminist theorists focus their analysis more narrowly on the European Court of Justice, arguing that the Court's ruling in equal-pay and equal-treatment cases have been motivated primarily by an interest in expanding the Court's own jurisprudence, rather than by an understanding of the deeper sources of gender inequality (cf. Hoskyns 1996). A recent analysis of European sex equality law, moreover, concludes that the European Court of Justice, which had arguably been the driving force behind the development of EU equal opportunities law in the 1970s and 1980s, "often appears to have lost sight of the objectives of the legislation and to be operating as the drag on the system" during the 1990s (Ellis 1998: 379).

In contrast to the equal treatment approach, Rees posits a second approach, called *positive action*, in which "the emphasis shifts from equality of access to creating conditions more likely to result in equality of outcome" (1998:34). More concretely, positive action involves the adoption of specific actions on behalf of women, in order to overcome their unequal starting positions in a patriarchal society. Rees's study concentrates primarily upon EU actions in the area of vocational training, but we can imagine a range of possible positive actions both within the workplace (such as child care and other programs aimed at the reconciliation of work and family life) and outside the workplace (such as women in decision-making, or issues of violence against women). Finally, Rees discusses the extreme version of positive action, namely *positive discrimination* (PD):

PD seeks to bring about changes to the *status quo* through mechanisms designed to increase the participation of the under-represented group: it is in effect the application of "unequal treatment." In the US, affirmative action measures allow for positive discrimination measures in some areas of employment in favour of women and members of ethnic minorities. Quotas also operate in Sweden. This approach is seen as a temporary measure to even up the balance of characteristics, such as gender and race, of people in sectors or at levels in the hierarchy which are particularly skewed (1998:37).

Since the 1980s, Rees detects a gradual move in the European Union away from a narrow equal-treatment

perspective, and toward the adoption of specific, positive-action measures on behalf of women. In this section, I argue that this gradual acceptance of positive action--and positive discrimination--has continued and indeed accelerated in the 1990s, for the reasons discussed in the introduction above. In particular, I focus on three key developments: (1) the adoption of a series of Action Programmes and the creation of expert and advocacy networks, pilot projects, and exchange of best practices; (2) the recent debate over positive discrimination, stimulated by the European Court's *Kalanke* decision and further developed in the Commission's response to *Kalanke*, the Court's subsequent decision in *Marschall*, and the adoption of a positive discrimination clause in the Amsterdam Treaty; and (3) the recent adoption of pilot initiatives on violence against women and trafficking in women, under the aegis of the Justice and Home Affairs pillar, which has legitimized EU intervention in an area previously off-limits to the economically oriented European Community. Taken together, these initiatives, although admittedly tentative, have allowed the EU to undertake concrete action in areas that fall well outside the narrow equal-treatment approach.

A. The Action Programmes and the creation of an Equal Ops network

By contrast with the equal opportunities approach, in which the European Court of Justice arguably played the key role in partnership with national courts and individual litigants, the key actors in the positive action approach have been the Equal Opportunities Unit in DG V of the Commission (Social Policy and Employment), and the Women's Rights Committee of the European Parliament. Put simply, the Equal Opportunities Unit has supported the incremental extension of the scope of EU policy in its four consecutive Action Programmes, while the Women's Rights Committee has in effect "pushed the outside of the envelope," raising sensitive issues such as violence against women, trafficking in women, pornography, the depiction of women in advertising, and other issues in which the Commission has hesitated to intervene (Moen 1999).

The story of the four Action Programmes, and the central role of the Equal Opportunities Unit in

those programmes, has been well told by Sonia Mazey (1995), and need only be briefly summarized here...

Summary of argument to be presented in the final version. Although initially linked almost exclusively to workplace-related issues, the Action Programmes have become more broad over time in the issues they address, culminating in the adoption of programs and networks on issues such as the reconciliation of work and family life, women in decision-making, and (in the third and fourth programmes) gender mainstreaming. Each of these programmes required the approval of the Council, which regularly edited the more controversial language from the programmes while trimming their budgets; nevertheless, under the rubric of these four action programmes, the Commission has undertaken three particularly noteworthy positive actions:

- a. Pilot projects.
- b. Networks of experts and advocates. Relate to mobilizing structures: Commission at the center of a large network of academics and NGOs, funded largely by EU money. Also Advisory Committee on Equal Ops.
- c. Soft law: recommendations on child care, women in decision-making, etc.

B. Positive discrimination from *Kalanke* to *Marschall* and Amsterdam

Summary of argument to be presented in final version: In *Kalanke* (1995), individual challenges positive discrimination in Bremen; ECJ rules that Bremen's policy violates Equal Treatment Directive (unconditional preference to women candidates). This ruling mobilized the EU women's rights community in outrage, and led the Commission to issue a Communication reassuring member states of the continued legality of positive discrimination, provided that such

provisions avoided the unconditional preferences referred to by the Court. Two years later, however, in the *Marschall* (1997) decision, the Court upheld a similar positive discrimination program in North-Rhine-Westphalia, arguing that the program avoided the unconditional preferences of the Bremen program, and that positive discrimination schemes are acceptable “if such a rule may... reduce actual instances of inequality which may exist in the real world.” The Amsterdam Treaty also explicitly allows member states to adopt positive discrimination schemes to benefit women (or men) in sectors in which they are under-represented. There is a legal debate as to whether the sum total of the Court’s jurisprudence in these cases changes the legal situation substantially; however, it is clear that the subject of positive discrimination has now been forcefully posed at the EU level, and that the majority of EU institutions—and, since the entry into force of Amsterdam, the Treaties themselves—are explicit in supporting the right of member states to adopt such programs.

C. Justice and Home Affairs, violence, and trafficking in women

The Court’s *Kalanke* decision in essence forced the Union to move beyond the positive actions of the various Action Programmes and confront the question of positive discrimination. Nevertheless, most of the positive actions we have examined so far (with the exception of the Commission’s campaign for women in decision-making) are concerned with either direct or indirect causes of discrimination against women in the workplace. Feminist critics might therefore point out that even the Union’s positive actions confront patriarchy only across the relatively narrow front of the workplace, and fail to cross the public/private divide.

To a large extent, this criticism is justified, yet it is also worth pointing out that the Commission has recently undertaken a series of initiatives concerning violence against women and sexual trafficking in

women, which do not rely on a clear link to economic or workplace issues. Rather, the legal basis for such initiatives arises from the Justice and Home Affairs provisions of the Maastricht Treaty, which entered into force in November 1993. Prior to 1993, issues such as sexual trafficking of women (with its link to immigration and asylum policies) and violence against women (with its link to domestic law and order) were essentially outside of EC competence, and could be dealt with at most through the mechanisms of the intergovernmental TREVI group. The Maastricht Treaty, however, created the Union's so-called "third pillar" to deal with issues of asylum, immigration, and police and judicial cooperation. This third pillar is legally intergovernmental, in the sense that the Commission enjoys no formal right of initiative, the European Parliament enjoys no powers of cooperation or codecision, and the European Court of Justice was (prior to Amsterdam) excluded from playing its role as the arbiter of EU law. Nevertheless, in the words of numerous participants, the third pillar provided "political cover" for women's advocates to press for the adoption of EU initiatives in these areas. In effect, the Maastricht Treaty enlarged the political opportunity structure of the Union in areas that had been too sensitive for Community action prior to the 1990s.

The first major EU initiative in these areas came in 1996 from the Commission services of Anita Gradin, the newly appointed Swedish Commissioner who held the Justice and Home Affairs portfolio. In doing so, Gradin was able to draw upon a preliminary set of recommendations on trafficking that had been adopted by the Justice and Home Affairs Council in 1993, as well as a 1995 report of the European Parliament, and the extensive discussion of trafficking at the September 1995 Beijing Conference on Women. Following up on these initiatives, the Commission set about establishing a new network of governmental officials, experts and advocates, beginning with the calling of a conference in Vienna in June of 1996. Later that year, the Commission released a Communication "On Trafficking in Women for the Purpose of Sexual Exploitation" (COM(96)567).

The Commission Communication proposed no immediate EU legislation, but it did provide an

extended definition and discussion of trafficking, which it defined as “the transport of women from third countries into the European Union... for the purposes of sexual exploitation” (4). Drawing on NGO reports, the Commission estimated the number of women trafficked into the Union in 1995 at 500,000, and pointed out that the scale of such trafficking was increasing as a result of the large number of women and girls being brought to the West for the purpose of sexual exploitation, often as a result of intimidation or violence. In response to this problem, the Commission proposed a series of possible measures to be adopted by the member states and the Union, respectively; and the Commission immediately established a modest programme called STOP (Sexual Trafficking of Persons), with a budget of ECU6.5million to support research and data collection, dissemination of information between national authorities, and training of national officials. *[Additional research scheduled for summer 1999 to examine the effects, if any, of EU action in this area; reserve judgment for the moment.]*

On the issue of violence against women, the Women’s Rights Committee of the European Parliament had long been a leading advocate of EU action, producing a report on its own initiative in 1986 which examined such sensitive issues as sexual violence, prostitution, and pornography, and called on the Commission to study the problem and propose to the Council a series of actions to criminalize and prosecute such acts of violence (European Parliament 1986). Given the nature of the issue and the considerable resistance of some member states to EC action in this area, however, the Commission produced no major initiative on the subject, which remained a marginal issue for the EC in the subsequent decade.

In 1996, however, the Women’s Rights Committee again took the initiative, proposing the insertion in the 1997 budget of a new ECU3 million budget line devoted to the fight against violence against women. According to various interviews (Brussels, June 1998), the Committee’s proposal initially faced resistance in the Budgetary Committee of the Parliament; in the midst of the budgetary process, however, the European press began to publicize widely the capture in Belgium of Marc Dutroux for the murder and

sexual abuse of a number of young girls, and in this context the Budgetary Committee proposed to the Parliament a new line (B3-4109) devoted to the fight against violence against both women and children. According to the budgetary rules of the EU Treaties, the European Parliament is authorized to increase EU spending within a narrow ceiling, and so the Parliament utilized this power (as it had in 1991 in the creation of the LIFE program on the environment) to allocate EU funds for a program that had been neither proposed by the European Commission nor authorized by Council legislation².

The Commission responded to the Parliament's initiative with the creation of the DAPHNE program (named after a character in Greek mythology who turns into a tree to avoid being raped—check on this!), which provided grants of between ECU 7,000 and 70,000 to some 47 non-governmental organizations and voluntary groups for innovative projects to prevent abuse and to counsel its victims³. The following year, the Commission proposed that the program be continued with a budget of ECU 3 million, which was approved once again by the Parliament; and in May 1998 Commissioner Gradin proposed to the Council the adoption of a five-year, ECU25 million programme, open to the 15 existing member states and the 11 candidate countries for admission to the Union, and capable of funding some 400 projects over the period from 2000 until 2004 (*European Report*, 30 May 1998; *get the relevant COM doc and follow up on the adoption of the program by the Council and its assessment by women's NGOs*).

² For details, see *Official Journal of the European Union* C 373, 09/12/1997, p. 134; and C 045, 10/02/1998, p.84. See also *European Report*, 30 May 1998; and *The Glasgow Herald*, 30 September 1997, page 9.

³ “The Commission will support actions which give added value to the work already going on at national level. Actions should, as a rule, include at least two Member States, and should promote exchange of best practices. They could include training, support to networks of NGOs, support to pilot projects, studies, research and information and cooperation between NGOs and public authorities.” Response by Commissioner Gradin to European Parliament question, *Official Journal* C 045, 10/02/1998 P. 0084. For an interesting example of a project funded by the Daphne initiative, see *Nottingham Evening Post*, 20 July 1998, p. 10.

In sum, the new provisions for Justice and Home Affairs have created a legal, and just as importantly a political, space within which the European Union may undertake new positive actions reaching far beyond the workplace into the domestic or private sphere. Like the four Action Programmes, and like the Commission's efforts in the area of positive discrimination, these new programmes are modest, relying primarily on exhortation, soft-law, and spending programmes whose budgets are dwarfed by the scale of the problems they confront. Hence, each of these programmes is symbolically important in terms of allowing the European Union to consider issues previously outside its mandate; but their immediate impact on European women is likely to be minor by contrast with a second major development in EU policy--the adoption of "gender mainstreaming."

II. Mainstreaming Equal Opportunities

In terms of Rees' classification of approaches to equal opportunities, the third and most promising approach is *gender mainstreaming*. By contrast with the positive action approach, which generally involves the creation of a specific organizational unit (such as the Equal Ops Unit of DG V) and specific programmes (such as the four Action Programmes and their pilot projects), the concept of gender mainstreaming calls for the systematic incorporation of gender issues throughout governmental institutions and policies. As defined by the Commission, gender mainstreaming involves:

The systematic integration of the respective situations, priorities and needs of women and men in all policies and with a view to promoting equality between women and men and mobilizing all general policies and measures specifically for the purpose of achieving equality by actively and openly taking into account, at the planning stage, their effects on the respective situation of women and men in implementation, monitoring and evaluation (Commission Communication, COM(96)67 final, 21.2.1996).

In other words, gender is factored into the making of all EU policies, from employment to transport, which then become instruments in the Union's general effort to promote gender equality. So defined, gender

mainstreaming is a potentially revolutionary concept, which promises to bring a gender dimension into all EU policies, and hence to all women and men affected by those policies. On the other hand, gender mainstreaming is also an extraordinarily demanding concept, which requires the adoption of a gender perspective by all the central actors in the policy process—including Commission Directorates-General, sector Councils of Ministers, and member governments with little experience or interest in gender issues. This raises two central questions for any student of gender mainstreaming in the EU: Why and how did the EU adopt a policy of gender mainstreaming in the first place, and how has it been implemented in practice?

1. The Origins of Gender Mainstreaming in the EU

Gender mainstreaming entered—in effect—the mainstream in September of 1995, when it featured in the Platform for Action of the Fourth World Conference on Women in Beijing, which defined the term broadly and committed the institutions of the UN system to the systematic incorporation of a gender perspective into policymaking (sources on Beijing; Hafner-Burton and Pollack, 1999). The concept of mainstreaming gender into public policymaking, however, pre-dates Beijing by at least a decade, having been developed with the UN development community (citation) and the more progressive countries of Northern Europe, such as the Netherlands, Sweden, and Norway (Mazur and Stetson 1995). The term first entered European Community parlance in 1991, when it appeared as a relatively small but innovative element in the Third Action Programme on Equal Opportunities (Commission 1991), but the concept remained unrealized during the Third Programme itself (1991-1996). During this period, the Commission undertook specific sectoral initiatives on behalf of women, most notably in the Structural Funds, where the Social Fund set aside some 5% of the budget for initiatives concerning women, and where the Commission created a Community Initiative called New Opportunities for Women (NOW). In addition, the Commission also introduced the concept of mainstreaming gender in its development lending, largely in preparation for the Beijing Conference. Despite these tentative efforts, no effort was made during the Third Action

Programme to create a bureaucratic structure across the Commission capable of introducing a gender perspective into all EU policies, and even the Structural Fund initiatives of this period fell short of a comprehensive incorporation of gender in all EU funding (Commission 1996a: 16).

The key year for the adoption of gender mainstreaming, rather, was 1995, when the political opportunity structure of the Union, which had always been relatively open to women's groups, became even more so, as a result of several events. First, the new Santer Commission was appointed from an expanded pool of member states, including three new members (Sweden, Austria and Finland) with a strong existing commitment to equal opportunities, and with considerable experience in gender mainstreaming their own public policies. Furthermore, the Commission nominees from the new member states--and in particular Commissioner Erkki Liikanen of Finland and Anita Gradin of Sweden--demonstrated keen interest in the equal opportunities portfolio which had been held in the previous Commission by the Social Affairs Commissioner, Pdraig Flynn of Ireland. As a result of these changes, and of the nomination choices of existing member governments, the incoming Santer Commission contained a record five women, and an increased interest in and commitment to equal opportunities. Indeed, it was decided by the incoming Commission to create a new "Commissioners' Group" devoted to equal opportunities issues, consisting of Flynn, Liikanen, Gradin, and the new German Commissioner in charge of the Structural Funds, Monika Wulf-Mathies.

This brings us to a second change in the political opportunity structure, namely the entry into force of the Maastricht Treaty in November 1993. As we have already seen in the case of Justice and Home Affairs, the adoption of the Maastricht Treaty broadened the remit of the Union, facilitating the adoption of EU policies on sexual trafficking and violence against women. In addition, although the Treaty did not actually change the decision rules regarding the adoption of Directives on equal opportunities, Maastricht did effect a major increase in the influence of the European Parliament, both through the new co-decision procedure and through its new role in the confirmation of the incoming Commission. In the event, the

Parliament's hearings on the Commission nominees, together with the weakness of support for Santer in the Parliament, had the effect of increasing the profile of equal opportunities issues in the new Commission, and Santer's public support for gender issues. More specifically, the various committees of the Parliament decided to hold US Senate-style hearings with each of the nominated Commissioners, five of whom came in for sharp criticism from their respective committees. In particular, the Parliament's Women's Rights Committee criticized Commissioner Flynn for his alleged lack of progress on women's issues in the Delors Commission, and for his earlier comments about Irish President Mary Robinson, and its chair, Nel van Dijk, demanded that Santer take the equal opportunities portfolio away from Flynn in favor of Anita Gradin. Fearing that any concession would be seen as a sign of weakness, Santer refused to take the portfolio away from Flynn, but in a gesture to the Parliament announced that his Commission would devote significant attention to equal opportunities, and that Santer himself would chair the proposed Commissioners' Group (**get citations for this story from *European Report*, Irish newspapers, etc.**).

Thus, thanks to the changing political opportunity structure of the Union, the mobilization of a supranational core of equal opportunities advocates, and external pressures from a newly empowered European Parliament, the new Santer Commission came into office in 1995 with a new Commissioner's group on equal opportunities, and a clear mandate for a major initiative in the area. The *substance* of the Commission's initiative, finally, was provided by the "policy frame" of gender mainstreaming--which as we have seen was already familiar to the Equal Opportunities Unit of the Commission, and which was given a major boost by the public adoption of mainstreaming as a key element of the Beijing Platform of Action. ***[Insert a few sentences here about Beijing, the place of mainstreaming in the Platform, and the constructive role of the EU in the negotiations.]***

This mainstreaming frame, moreover, "resonated" within the Commission, which possessed prior experience with the integration of another consideration--the environment--across all issue-areas (interviews, Brussels, June 1998). In February 1996, therefore, the Commission therefore followed up its general

commitment to equal opportunities with a new Communication entitled, “Incorporating Equal Opportunities for Women and Men into All Community Policies and Activities” (COM(96)67 final), which committed the Commission to the mobilization of all Community policies for the purpose of promoting gender equality, and which surveyed a number of policy areas, such as vocational education, development, and above all the Structural Funds, which were identified as particularly promising areas for mainstreaming gender in the future. Later that same year, the Commission proposed, and the Council adopted (with amendments), the Fourth Action Programme (1996-2000) on Equal Opportunities for Women and Men, which featured mainstreaming as the single most important element⁴.

Thus, by the end of 1996, the European Commission, the European Parliament and the Council of Ministers had adopted the principle of mainstreaming gender across all EU policies. In order to implement the principle of mainstreaming, however, the EU would have to mobilize, not merely the equal opportunities network surrounding DG V, but the entire policymaking machinery of the Union. It is to this challenge that we now turn.

2. Implementing Mainstreaming: Piercing the Needles’ Eyes

In their critical review of EU equal opportunities policy, Ilona Ostner and Jane Lewis (1995) argue persuasively that any gender-related policies at the European Union level must pass through two “needles’ eyes” in order to be discussed, adopted, and implemented:

Supranationally, such policy generally has to be cast as employment-related, limiting it to individuals in the world of paid work. The welfare regime of each member state and the gender order underlying it constitute the other needle’s eye that influences how EU directives are implemented (161).

In the case of gender mainstreaming, I would argue that the importance of casting EU policy in terms of employment is reduced, since by definition mainstreaming is about the integration of a gender perspective

⁴Get full citations for Commission proposal, EP report, and Council Resolution.

into all policy areas. On the other hand, the need to integrate gender across-the-board suggests that there are not two but three institutional needle's eyes through which gender mainstreaming must pass: (1) the supranational level of the Commission bureaucracy, in which the majority of Directorates-General have little or no experience in adopting a gender perspective; (2) the intergovernmental level of the Council, where any proposed policies must garner a qualified majority or even a unanimous vote among the member governments; and (3) the member-state level, at which both binding and non-binding EU provisions are implemented according to the "gender order" of each respective member state. In order for the mainstreaming approach to succeed, gender issues must be taken on board at all three levels—making gender mainstreaming a particularly demanding, as well as promising, approach to policymaking. To what extent has the Union been able to overcome these three hurdles and institute a real policy of gender mainstreaming in the roughly three years since the Commission's 1996 Communication?

It is, of course, early days for gender mainstreaming in the European Union, and so any assessment we might offer in this context must necessarily be tentative. Nevertheless, on the basis of existing documentation and interview data, it is possible to review (a) the procedures put in place thus far to ensure that a gender perspective is indeed considered in the planning and implementation of all EU policies; and (b) the preliminary record of EU successes and failures in selected policy areas. I consider each of these—very briefly and tentatively, pending further research—below.

(a) Commission procedures for gender mainstreaming

In order to succeed, the policy of gender mainstreaming must reach out beyond the core of equal opportunities advocates in and around DG V, incorporating in the first instance officials from other policy areas and other Directorates-General. As Sara Nelen points out in her early review of EU mainstreaming, the methodological requirements for gender mainstreaming are quite demanding, ranging from the basic requirement of consciousness-raising (i.e. making officials aware of gender as a category of analysis) to the

collection of statistics and other data disaggregated by sex, to such specialized techniques as “gender proofing” and “gender impact assessment” (Nelen 1997: 43-48). Recognizing these demands, the Commission explicitly set out to establish centralized coordination, gender expertise in the various DG’s, and explicit methods to guide officials in the implementation of gender mainstreaming across all policy areas.

First, as was already noted above, the Santer Commission established a special “Equality Group of Commissioners” chaired by Santer and featuring Commissioners Gradin, Wulf-Mathies, Liikanen, and Flynn as regular members (with other members free to attend depending on the subject matter under discussion). The Commissioners’ Group meets only three times a year, and its actual impact on policymaking is the subject of debate among Commission participants (interviews, June 1998, April 1999), but in principle it provides both a high-level commitment to the principle of mainstreaming and centralized coordination of gender in all EU policies.

Below the level of the Commissioners’ Group, two inter-service groups were established in 1996, the first devoted to equal opportunities in general, and the second on equal opportunities within the Structural Funds (which, as we shall see, were selected as a test case for the new mainstreaming approach). At a lower level, a group of “gender mainstreaming officials” has been appointed within each of the Commission’s Directorates-General and Services: these officials serve both to represent a gender perspective in their respective DG’s, and to coordinate policy with the other mainstreaming officials in the group (Commission, 1998a, 1998b)⁵. Finally, in order to assist these officials in the implementation of the mainstreaming approach, the Equal Opportunities Unit of DG V prepared during 1997 a “Guide to Gender Impact Assessment,” providing officials with a basic checklist for the inclusion of gender issues in any proposed policies (Commission 1997: *provide the reader with a paragraph demonstrating how GLA*

⁵*Additional research on these networks forthcoming in Summer 1999.*

works in practice?).

In principle, therefore, by 1999 there exists a horizontal network of Commission officials, ranging from the Commissioners' Group to the gender mainstream officials, and a preliminary set of methodological instructions for how to perform gender impact assessment or gender proofing of policies. Interviews with Commission and outside officials, however, immediately reveals that gender mainstreaming remains in its infancy in the Commission, and that a gender perspective has been incorporated extensively in some Directorates-General (such as external relations, employment, and Structural Funds) and less so or not at all in others. Various explanations for such cross-sectoral variation can be put forward, ranging from the previous experience of a given DG with gender issues, to the presence of powerful women in key positions in different DG's, to the "resonance" or fit of the mainstreaming frame with the traditional mission of a given Commission service (*more on this in the final version: it would be nice to put forward some more concrete hypotheses about the determinants of success or failure of mainstreaming across issue-areas*).

In any event, the Commission itself remains only one among a number of organizations in the policy process. In some areas, such as research and technological development, the Commission's proposals have failed to fully integrate a gender perspective, only to have such a perspective inserted by the European Parliament during the policy process (see below). In other areas, by contrast, such as the Structural Funds and the 1998 Employment Guidelines, the Commission has proposed far-reaching policies, only to see these policies watered down in the Council of Ministers, or in implementation by the various member states. Hence, in order to convey a sense of the operation of mainstreaming in practice, and to begin to explain the success or failure of mainstreaming, it is vital to move beyond procedural considerations, and examine the proposal, adoption, and implementation of the mainstreaming approach across a number of policy areas. It is this task to which we turn in the next section.

(b) Mainstreaming EU policies

Preview of the argument of this section: Despite the relative youth of the mainstreaming approach, the Commission has already proposed, and the Council adopted, gender-sensitive policies in a number of issue-areas. To some extent, data on these policies is already available, through the Commission's annual reports on equal opportunities; the text of Commission proposals and Council legislation; and the very small number of articles available through databases such as Lexis-Nexis. However, I am refraining from writing a full-blown narrative of these issue-areas pending further research. The outline below is therefore tentative, and will be fleshed out in the light of further research and subsequent empirical developments:

- a. **Development lending** (goes back to early 1990s). The earliest sector to explicitly embrace mainstreaming, within the context of the preparations for Beijing. Often cited as a success story, but very little is actually available in official documentation.
- b. **Education and Vocational Policies** (positive action in favor of women). Held up as a success by the Commission in its various reports, but criticized extensively by Rees, who argues that the addition of a few positive action programmes falls short of a full-scale mainstreaming policy.
- c. **Structural Funds**. Once again, ESF and NOW programs provide specific positive action programs for women, and the 1993 Fund Regulations explicitly require conformity of Funds to the Community's equal opportunities policies; by the Commission's own admission, however, these provisions fall short of genuine mainstreaming. By contrast, the new Structural Fund Regulations proposed by the Commission in 1998 provide for genuine, radical mainstreaming: statistics and

planning disaggregated by sex; specific lending for women; gender parity on monitoring committees, etc. Fieldwork in 1998 indicated that member states were not strongly resisting the Commission's proposals in the initial negotiations, but the final Fund Regulations have not yet been adopted. This will be a key test case, and was intended as such by the Commission, which put an extraordinary amount of resources and expertise into this area.

d. **Employment Guidelines.** Not originally intended as a key test case for GM. However, the Amsterdam Treaty provides for annual guidelines to be adopted by EU for national policies, starting in 1998. The Commission responded by Commission proposing ambitious mainstreaming of gender issues in the guidelines. The Council, however, downgraded gender from a horizontal concern to one of four pillars in the 1998 guidelines; the Council also removed quantitative targets for gender equality (as for other issues), and the Commission subsequently chided the member states for at best superficial implementation of the gender pillar of the guidelines. Stronger language on mainstreaming appears in the 1999 guidelines, but effect on national action plans still unclear.

e. **Fifth Framework Programme in R&D.** This appears to be a case in which the Commission itself proposed a rather tepid document, which was returned with amendments by the Parliament, which called for research "on, by and about" women. New Programme includes specific targets for women.

f. **Commission staff.** This is a doubly interesting issue—both to see the way in which the Commission has mainstreamed gender in its own hiring practices, but also insofar as many advocates of mainstreaming (especially in the UN system: see Hafner-Burton and Pollack 1999)

argue that an increased presence for women in the policy process is a central prerequisite to a successful GM approach.

3. GM after Amsterdam: Prospects and Problems

1. Amendments in the *Treaty of Amsterdam* confirm GM and broader agenda. Articles 2 and 3 of the Treaty make equal ops—and not just equal pay or equal treatment—a goal and task of the EU. These articles are not directly effective, but they do represent a Treaty-based political commitment to gender mainstreaming which the Commission may now cite in each of its proposals. In addition to these preliminary references, a new Article 141 (ex Article 119) strengthens language on equal pay; provides for QMV and co-decision on equal opportunities legislation; and contains a specific clause permitting states to maintain positive discrimination policies. The effect of these provisions is unlikely to be felt in the short-term, since the Commission has no immediate plans to propose new legislation under Article 141, and the new positive-discrimination clause in Article 141(4) arguably restates the Court's post-Marschall jurisprudence. However, by providing Treaty bases for progressive policies of positive discrimination and mainstreaming, as well as a new legislative instrument in Article 141(3), the new Treaty is likely to facilitate the further broadening of the equal opportunities agenda, far beyond the intentions of the governments that agreed to it.

2. *Nevertheless, the GM approach is not without its dangers, and its critics.* Focus on two key critiques here:

* First, it is worth noting that the Commission's GM policy has been supported with caution by the

EP, the European Women's Lobby and other women's groups, all of which are worried that a focus on gender mainstreaming will lead to the abandonment of specific, positive actions on behalf of women. In the words of one critic, "If gender is everybody's responsibility in general, then it's nobody's responsibility in particular" (interview, June 1998). In response to this criticism, the Commission has consistently advocated a so-called "dual strategy" of continued positive actions on the one hand, and mainstreaming gender across all policies on the other.

* This then raises a second critique from Teresa Rees, who argues that gender mainstreaming requires far more than the introduction of new GIA procedures; it requires a fundamental challenging and rethinking of existing institutions and policies in terms of gender. Although GM remains in its infancy, it seems likely that GM will take the former rather than the latter form in the European Union, and may therefore fail to serve as the radical instrument of change proposed by Rees..

III. Conclusions: The New EU Agenda and Domestic Politics

This paper began with a debate about the EU's equal opportunities policy, with an optimistic camp emphasizing the adoption of legally binding equal pay and equal treatment laws in the workplace, and a pessimistic camp of feminist analysts pointing out the weaknesses of the EU's "equal treatment" approach. The burden of this paper has been that the feminist characterization of EU equal opportunities policy as being narrowly focused on equal pay and equal treatment in the workplace is no longer accurate in the late 1990s, and that recent initiatives have taken the EU well into Rees' categories of positive action and gender mainstreaming. Hence, my response to the question posed in the title of this paper--Towards a broader

agenda?--is a clear "yes." Indeed, I would go further, arguing that the EU's official policy of gender mainstreaming constitutes one of the most progressive positions of any polity on earth--at least at the level of rhetoric.

And here is the rub, for what may be conceived at the broad level of rhetoric may be stillborn at the level of implementation. Almost without exception, the initiatives described above are quite recent--most of them dating from the inauguration of the Santer Commission and the adoption of the Fourth Framework Programme--and their implementation is in its early stages. As we have seen, the Commission's new positive-action and gender-mainstreaming initiatives must pass through the three needles' eyes of the Commission bureaucracy, the intergovernmental Council, and member-state implementation; and the examples we have examined above--the slashing of the Commission's proposed budget for the Fourth Action Programme, the downgrading of the gender perspective in the Employment Guidelines, and the weakness of National Action Plans for employment--suggest that these hurdles remain formidable. Furthermore, most of these initiatives lack the legally binding character of Article 119 and the various Directives on equal pay and equal treatment, which create legally enforceable rights for women in the various member states. Hence, it seems likely that most of the new positive action programmes, and most provisions adopted under the Union's gender mainstreaming policy, will be implemented unevenly across the member states, and affect ordinary women and men differentially, if at all, in the short- to medium-term. The promise of EU positive action and gender mainstreaming, therefore, lies not in the immediate creation of new, legally enforceable rights for European women, but rather in the diffusion of a "gender perspective" in the making of EU, and ultimately, national policies.

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