

Women of Europe

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Equality and the Treaty of Amsterdam

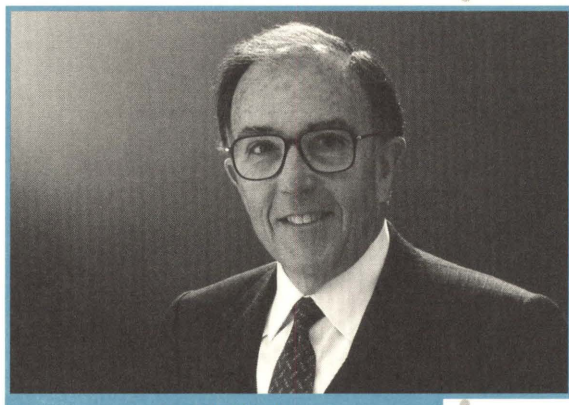
By Marcelino Oreja, European Commissioner responsible for relations with the European Parliament, relations with the Member States, Culture, Audiovisual, Office for Official Publications, Institutional Affairs

A new Treaty for a Europe that is closer to its citizens: this is one of the goals of the Treaty of Amsterdam, the principal result of long and difficult negotiations. More rights, less discrimination, more thorough attention to the issues which worry Europeans, such as unemployment, health, consumer affairs and the environment.

But Amsterdam was also the occasion for making serious progress in strengthening equality of opportunity between women and men. Equality has become one of the principles of the Treaty and one of the goals of Union action. The Union must pursue the achievement of equality in all its policies. The Treaty also recognised that in

everyday reality, substantial obstacles may stand in the way of full parity, especially in the work sector. It is no longer sufficient to

Member States even have the right to implement positive discrimination, where it is obvious that, according to the facts, there is no true equality of opportunity between men and women.



Marcelino Oreja
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In this way the battle for equal opportunities becomes a battle of the European Union. With these new provisions, as with those aiming to respond to the concerns of citizens, the Union fully intends, more than ever before, to become the Union of peoples of men and of women, and not only a Europe of prosperity and markets.

But the provisions of the Treaties are not the solution to the problems: it will be necessary for men as well as women to act to make the measures concrete, and to place these issues at the centre of policy considerations. The Treaty of Amsterdam has not completed the building of equality; it has simply opened up a new construction site: it is up to citizens and the institutions to work on it.

make the salaries of men and women equal for the same work, as the EC Treaty already stipulated in the 1950s, but it is also necessary to make provision for actions to compensate for or to eliminate the obstacles to equality. With the Treaty of Amsterdam,

Editorial

What has happened to the Treaty agreed in Amsterdam? We are answering this frequently asked question by dedicating this newsletter to the state of play of the new Treaty and analysing its impact in the context of equal opportunities between women and men.

After lengthy negotiations opened in Turin in March 1996, the Intergovernmental Conference (IGC) came to an end with the adoption, at the June 1997 Summit, of a new Treaty in Amsterdam. In October the same year the fifteen Heads of State and Government formally signed the text of the Treaty, leaving it to the Member States' national ratification procedures. These procedures have now started in the majority of Member States and it is hoped that they will be completed in time for the Treaty to enter into force as planned in early 1999.

Also with a view to the future, enclosed is a survey designed to establish a clearer idea of what our readers expect from the *Women of Europe Newsletter*. I would therefore be most grateful if you could take a few minutes to complete and return it to us.

Ana Paula Laissy

Ana Paula Laissy
Head of Section - Information for Women

Women in the new European society

By Teresa Freixes Sanjuán
Professor of Constitutional Law, Expert for the European Commission and Council of Europe, Director of the European Institute of Law

At the dawn of the 21st century, political, economic and socio-cultural changes are shaping the future design of Europe, which is in the process of reforming its structures. Against this background, and in the light of the new Treaty approved at the Amsterdam Summit, the main challenge is to examine the model of society and, at the same time, the role of women in the new European society.

On 2 October 1997, the Heads of State and Government of the Fifteen Member States met in Amsterdam to sign the amended version of the Treaty on European Union. The work of the Intergovernmental Conference had culminated in a new Treaty which emerged under radically different circumstances from those marking the negotiations that had led up to it. There had been a change of government in several European countries, notably the United Kingdom and France, and a struggle was under way to include social problems, particularly unemployment, in the new Treaty. This would then make it possible to adopt polit-

ical guidelines aimed at finding a solution which, while dependent on the developments in the economies that were moving towards the introduction of the euro, would permit greater social cohesion in Europe at the turn of the century.

Women and the Intergovernmental Conference

Within this context, women managed to make their voices heard during the IGC, calling for the inclusion in the new Treaty of the European Union's international commitments (Beijing, CEDAW). In fact the

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Women in

conclusion of the Beijing Conference virtually coincided with the launching of the Task Force set up to prepare the Intergovernmental Conference which was to culminate in the reform of the Treaty. Numerous initiatives were taken with a view to ensuring that equality between men and women was included in the text.

However, the demands by women were not confined to asking for the inclusion of equality in the new Treaty. Other concerns included respect of human rights in the Union, citizenship problems, the recognition of social rights, the reinforcement of democracy, the rejection of racism and xenophobia, and the need to put an end to trafficking in persons and offences against children. These demands were channelled through various social organisations and public institutions, the aim being to get the Governments to reform the Treaty on European Union in such a way as to reduce the democratic and legitimacy deficit acknowledged by the European institutions themselves.

The new situation in the wake of the Amsterdam Treaty

The changes occurring in the European Union, which concern economic structures in particular, are demonstrating very clearly just how important it is to move towards better political coordination and greater social cohesion. There are even calls for the drafting of a European Constitution, with all the implications this would entail. In this context, the reform of the Treaty on European Union must permit the reinforcement of democracy and underpinning of legitimacy in the new Europe that is emerging. Equality between men and women is an indispensable keystone in this structure.

The introduction of the euro, the single currency, will coincide with the process of ratification of the Treaty of Amsterdam. The European Parliament adopted a favourable

opinion towards the Treaty in November 1997. Member States have started to ratify the Treaty by vote in the national parliaments or by referendum, depending on each country's legislative requirements (see table below). If ratified, the Treaty will pave the way for the launching of negotiations to enlarge the Union to countries in Central and Eastern Europe. Later, when the fifteen Member States have grown to twenty, another Intergovernmental Conference will have to be convened to initiate a new reform of the Union's institutions.

For women throughout Europe, both in the countries forming part of the Union and in those that will eventually join, the provisions on equality between men and women approved at the Amsterdam Summit are an extremely important legal framework for progress towards real equality.

Innovative features

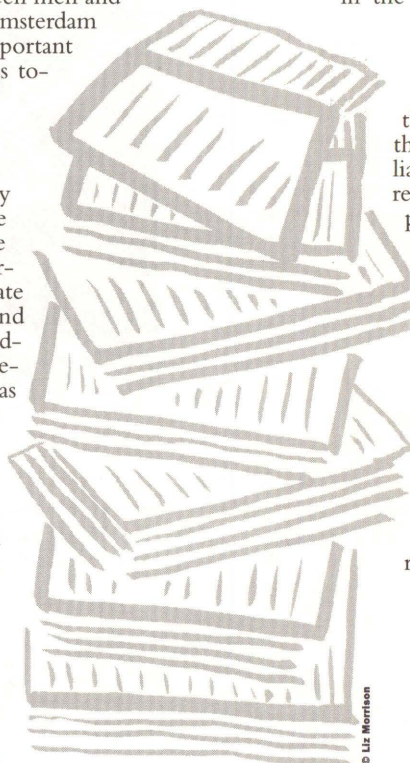
The adoption of equality as a fundamental task of the European Union and the way in which the various articles of the Treaty regulate equality between men and women (see page 4) are landmarks in the new Europe. Before Amsterdam, equality was seen solely from the point of view of equal pay. From these narrow confines it has emerged to become one of the Community's tasks. The European Union can now combat all forms of discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. Practical measures have been laid down to promote equality in social policy and in relation to

quality employment and professional activity, consisting of positive action for the under-represented sex.

The criticisms

However, several aspects of the way in which the Treaty of Amsterdam recognises equality and non-discrimination have been severely criticised. For instance the approval of general positive action for both sexes is criticised on several counts. Women's groups in general rejected the inclusion of sex discrimination in the anti-discrimination clause concerning minority groups. The fact that equality between men and women is not established as a fundamental right

in the strict meaning of the term is also a weak point of the Amsterdam reform. It is obvious, for example, that the proposals by the Conference of Parliamentary Committees responsible for equal opportunities policy in the Member States and in the European Parliament and those by the European Women's Lobby were far more ambitious than what was actually achieved. Despite the progress made, there is still a long way to go before equality becomes reality at all levels.



Ratification: state of play (Source: Treaty of Amsterdam Follow-up Unit, European Commission)

Member States	Procedure envisaged	Actual Stage reached
Belgium	Parliamentary	Council of State gave its opinion on 29 January 1998
Denmark	Referendum (28 May) and Parliamentary	Parliamentary procedure suspended due to General Election
Germany	Parliamentary	Bundestag adopted law on 5 March. Bundesrat adopted law on 27 March
Greece	Parliamentary	A date for Parliament has not been set
Spain	Parliamentary	The procedure has not yet begun
France	Parliamentary	Constitutional reform expected in July 1998
Ireland	Referendum (22 May) and Parliamentary	Referendum scheduled for 22 May 1998
Italy	Parliamentary	Chamber of Deputies adopted ratification bill on 25 March
Luxembourg	Parliamentary	Report sent to the Parliament on 2 December
Netherlands	Parliamentary	Draft law sent to Parliament. Lower House currently examining it
Austria	Parliamentary	Report to Parliament still being prepared
Portugal	Referendum (October) and Parliamentary	A date for the referendum is still awaited. Expected during mid October
Finland	Parliamentary	Ratification bill sent to Parliament on 30 January 1998
Sweden	Parliamentary	Ratification bill sent to Parliament on 17 February 1998
United Kingdom	Parliamentary	Final reading completed in Commons. Reached committee stage in the Lords

the new European society

Citizenship and human rights

The wording in the Treaty of Amsterdam has turned "People's Europe" into a key issue in the debate on what it means to be a citizen in Europe. The Maastricht Treaty had already created European citizenship and had given Europeans a series of rights, including the right to vote and to stand as a candidate in local elections in every Member State.

The Treaty of Amsterdam extends citizens' rights while at the same time recognising the fundamental rights of all persons as enshrined in the European Convention on Human Rights and the constitutional traditions common to the Member States. Similarly, the economic and social rights contained in the Protocol on Social Policy have been incorporated into the text of the Treaty. This extension of rights approved at the Amsterdam Summit is a particularly important starting point for defining the model of society that is being established by the process of European integration.

The legal importance of the recognition of equality

It must be pointed out that the introduction of equality into the Treaty is extremely important from the legal point of view. Equality between men and women is now enshrined in a Treaty, in a Community rule based on primary law, which is of a higher rank in legal terms than Community rules based on secondary legislation (regulations, directives, resolutions, etc.). Therefore it must be respected and reflected in the European Union's other rules. The hierarchy in Community legislation is based on the principle that Community secondary legislation cannot contradict the provisions of the Treaties; consequently all Community laws of a lower rank than the Treaty of Amsterdam which may be contrary to the provisions of that Treaty concerning equality between men and women should be regard-

ed as superseded by the new rule or will have to be reinterpreted in the light of the provisions of the new Treaty. All the European Union bodies, on the one hand, and all the Member States' authorities, on the other, are bound by what was agreed at the Amsterdam Summit.

A new dimension for the protection of equality by the Court of Justice

The judges at the Court of Justice will be obliged to apply the new equality rules in their judgements, and they may not deliver judgements that run counter to the provisions of the Treaty. They will no longer be bound by the need to treat equality solely from the point of view of equal pay, but will be able to extend the scope of the legal effects of equality between men and women to the entire body of EU law, and to ensure that Member States comply with it.

The Court of Justice, the body that oversees compliance with the Community Treaties, must now base its judgements on the new legal context of equality between men and women as provided in the Treaty of Amsterdam. Depending on the case in question, equality may now be understood in various ways: it may be seen as equal treatment, as the prohibition of discrimination or as requiring the adoption of positive action, even the promotion of women in bodies or institutions responsible for decision-making.

Equality between men and women as a Community task

The European Commission, the European Parliament and the Council of Ministers, each within the limit of its own powers, will also have to implement the equality provisions in the Treaty of Amsterdam by producing new rules to be added to the existing body of law. They may not formulate any Community policy without taking account of what is laid down in the Treaty. The

Community institutions must take into consideration the fact that equality is a Community task and a general objective of all the policies pursued by the Community. With equality treated as an EU policy, it will be possible to broaden the scope of the multiannual action programmes, first transversally since all of them, regardless of their objectives, will have to comply with the equality requirements set down in the Treaty of Amsterdam, and second, specifically, since the adoption of more effective and stronger measures in programmes specifically proposed to promote equality between men and women will be justified. It will no longer be possible to argue, as was done to reduce the budget for the fourth medium-term Community action programme on equal opportunities, that equality between men and women did not have sufficient legal ranking to merit the amount initially proposed.

EU Member States bound by equality as proclaimed in Amsterdam

If it is found that a rule of law in a Member State contradicts the provisions of the Treaty of Amsterdam, the legal force of the Treaty is such that the Member States' internal bodies (judges and administrative bodies) must refuse to apply rules contrary to Community law; they are bound to apply the provisions and new rules laid down in the Treaty. Should national judges have doubts about whether domestic laws are compatible with Community laws, they may refer to the Court of Justice for a preliminary ruling. They are in fact obliged to refer such matters if they are going to deliver a judgement that cannot be set aside, in other words a judgement that cannot be appealed.

By the same token, the Member States' legislatures are bound by Community law. Members of national parliaments may not adopt laws contrary to Community rules. It will even be necessary in some instances to reform the constitutions of Member States that contain provisions running counter to the Treaty. Several Member States will have to embark on constitutional reforms or call a referendum in order to ratify the Treaty of Amsterdam. In these cases, we citizens have the final say, and one should not forget that women make up half of Europe's citizens.

A major advance

While the outcome of the Amsterdam Summit is not completely satisfactory in terms of women's aspirations, the incorporation of equality into the text of the Treaty undoubtedly constitutes a major advance in the process of European integration. Although Europe still suffers from a considerable deficit in terms of legitimacy, it is beginning to become more sensitive to the aspirations of its citizens. The new legal approach to equality between men and women contained in the Treaty of Amsterdam is a significant step in this direction. ●

Probable date for completed procedure	Probable date of next legislative elections
Autumn 1998	4 July 1999
End of May or deposit of instrument in June	March 2002
End of May 1998	September 1998
September/October 1998	September 2000
Spring / Summer 1998	March 2000
Uncertain - Probably Autumn 1998	February/March 2002
July 1998	June 2002
Before Summer 1998	March 2001
Spring 1998	June 1999
End of 1998	6 May 1998
July 1998	October 1998
Late Autumn 1998 depending on referendum	October 1999
May/June 1998	March 1999
June 1998	September 1998
May/early June 1998	Before 31 May 2002

What's in the Amsterdam Treaty for women?

Art. 2: The Community shall... promote... a high level of employment and social protection, equality between men and women, the raising of the standard of living and quality of life, and economic and social cohesion and solidarity among Member States

Art. 3: In all activities referred to in this Article, the Community shall aim to eliminate inequalities, and to promote equality, between women and men.

Art. 13: ...the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

Art. 137: With a view to achieving the objectives of Article 136 (incorporating Article 1 of the Social Protocol, which was amended into the Treaty, aiming to promote employment and improve living and working conditions.), the Community shall support and complement the activities of the Member States in the following fields:

...equality between men and women with regard to labour market opportunities and treatment at work.

Art. 141: Each Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied.

2. For the purpose of this Article, "pay" means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his employment, from his employer.

Equal pay without discrimination based on sex means:

- a) that pay for the same work at piece rates shall be calculated on the basis of the same unit of measurement
- b) that pay for work at time rates shall be the same for the same job.

3. The Council, acting in accordance with the procedure referred to in Article 251, and after consulting the Economic and Social Committee, shall adopt measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, including the principle of equal pay for work of equal value.

4. With a view to ensuring full equality in practice between men and women in working life, the principle of equal treatment shall not prevent any Member State from maintaining or adopting measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers.

These provisions on equality in the Amsterdam Treaty are based on the European Union's consolidated treaties. The articles are numbered as they will appear in the new Treaty, once it has been ratified by all Member States.

interview

Women must show solidarity by ratifying the Amsterdam Treaty

Helena Torres Marques, Member of the European Parliament (PSE, Portugal), explains why she feels it is so important for European women to fight for the ratification of the Amsterdam Treaty and what they stand to gain.

What are the most important gains for equal opportunities in the Amsterdam Treaty?

First of all that equality is now a fundamental right, there can no longer be discrimination on grounds of sex or gender. Secondly, Article 2 makes equality between women and men a mission of the Union. This has provided us with a much-needed legal base for equal opportunities. And Article 3 describes how the Community must go about achieving equality between women and men: it has to combat discrimination and to promote equality. This means, on the one hand, the EU has to look at the situation as it is now and try to rectify what is wrong and, on the other, it has to promote change. The fact that the Social Protocol is now included in the Treaty is also important.

I would say this Treaty is a step forward for women. In countries where women enjoy full equal rights with men – for instance in Denmark – they must realise that their responsibility for ratifying the Treaty is that much greater. If they vote against the Treaty, this will mean preventing women in other countries from enjoying these rights.

If you had to convince women to vote for the Treaty, which argument would you use?

Solidarity would be the most important argument. We Europeans lost a lot when the Norwegians voted against EU membership. Norwegian women said they saw Europe as a very masculine place. But I think EU women needed their strengths, their experience. I think if we had got this message across to them, if we told them we needed them inside the EU to help us make our world more like their world, that we needed them more than they needed us, things may have been different.

How would you respond to the criticisms made by women's groups and associations about the Treaty?

We have won a lot with this Treaty and we will lose a lot if it is not ratified. It does

not mean that I am completely happy with its contents. I agree with many of their criticisms. For example, I am not at all happy with the article on non-discrimination. If I had written the Treaty I would not have mixed sex discrimination with that of xenophobia or religion. The problem with this Treaty is that it is written in a traditional way, like most other national constitutions. This is a problem we must tackle in the future.

How would you like to see the provisions on equality changed in a future revision of the Treaty?

There are three main changes I would like to see: the first is a broadening of the scope of the new Article 141 (formerly 119) to provide a legal basis for equality between women and men going beyond the field of employment so as to cover all aspects of women's lives including work, politics and the family. Equality for women and men in Articles 2 and 3 could be enshrined in a separate chapter on equality policy; the new Article 13 (formerly 6a) could be rewritten to give the ban

on discrimination based on sex direct effect or, as a minimum, to give Parliament a greater say on this. All in all, I think we need much more precision and clarity. ●



Helena Torres Marques
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