INTRODUCTION

1. An Overview of Gender Equality Legislation and Policy in the European Union

Gender equality usually refers to a situation in which women and men have equal rights and obligations and are treated the same, irrespective of social status. Rather a modern concept, 'gender equality' is still politically controversial in many countries. Within the EU space, the principle of equal treatment developed from a rather isolated legal provision in the 1960s, to a currently significant and meaningful *Acquis Communautaire* in the area of equality. However, as a critical element of economic and social cohesion, gender equality at the EU level has progressed in small steps throughout the integration process.

The EU has produced an important body of legislation in the field of gender equality. The principle of equal pay was introduced in the Treaty of Rome in 1957. Forty years later, the 1997 Amsterdam Treaty significantly enhanced the primary law by giving the Community legislative body a specific legal basis to take action in the area of equal opportunities and equal treatment between women and men.[1] In particular, Article 141[2] is a critical legal provision, as the European Court of Justice has stated[3] that it represents part of the social objectives of the Community, and that the Community is not perceived as only an economic union, but at the same time a union aiming to

[1] Articles 13, 137 and 141 of the Amsterdam Treaty.

[2] "1. 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 pieces rates shall be calculated on the basis of the same unit of measurement; (b) that pay for the 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 equal work or 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 underrepresented sex to pursue a vocational activity or to prevent or compensate for disadvantaged in professional careers."

[3] Judgment of the European Court of Justice of February 10, 2000, in Case C-270/97 *Deutsche Post AG v Elisabeth Sievers* and Case C-271/97 *Deutsche Post AG v Brunhilde Schrage*, joined cases C-270/97 and C-271/97. ECR 2000 p. I-00929.

ensure social progress and improvements in the living and working conditions of its citizens. Furthermore, the *Charter of Fundamental Rights of the European Union*[4] provides for equality between women and men as a fundamental principle.[5] In terms of secondary legislation, the 1975 Directive on Equal Pay and the 1976 Directive on Equal Treatment in Employment were important legal tools in protecting equal opportunities for women and men in professional life as they relate to equal pay for work of equal value, access to employment, vocational training, promotion and working conditions. Further directives on equal treatment for women and men in matters of social security schemes, occupational social security schemes, maternity and parental leave, and part-time workers completed the legal picture in terms of providing the basis for challenging sex-based discrimination. Following the case law developed by the European Court of Justice and in order to make Community law effective, another very important piece of legislation was added in 1997 that shifted the burden of proof in cases of sex based discrimination, namely Directive 97/80/EC.[6] This Directive is particularly important as it raises the concept of indirect discrimination.[7] In recent years the European Court of Justice has issued over 50 judgments further consolidating the legal framework on equal opportunities for women and men.

In addition to the primary and secondary legal frameworks, important soft law instruments were also articulated. *The Community Framework Strategy on Gender Equality (2001–2005)*[8] represents an important and strategic document in relation to gender equality, as it articulates the Commission's action framework aimed at "eliminating inequalities and promoting equality between women and men" by addressing a number of critical objectives: promoting gender equality in economic life, equal participation and representation, equal access and full enjoyment of social rights

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4 The Charter of Fundamental Rights of the European Union was signed in Nice on December 7, 2000, *Official Journal of the European Communities* (hereinafter *Official Journal*), C 364 of 18.12.2000, pp. 0001–0022, available at http://www.europarl.eu.int/charter/pdf/text_en.pdf.

5 *Ibid.*, Article 23.

6 Council Directive 97/80/EC of 15 December 1997 on the Burden of Proof in Cases of Discrimination Based on Sex as amended by Council Directive 98/52/EC of 13 July 1998 on the Extension of Directive 97/80/EC on the Burden of Proof in Cases of Discrimination Based on Sex to the United Kingdom of Great Britain and Northern Ireland.

7 The concept of *indirect discrimination* was further developed by the Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002.

8 European Commission, *Towards a Community Framework Strategy on Gender Equality, 2001–2005* (Brussels: EC Employment and Social Affairs DG, June 7, 2000), available as COM(2000)335/final at http://europa.eu.int/comm/employment_social/equ_opp/strategy/com2000_335_en.pdf.

for women and men, gender equality in civil life, change of gender roles and stereotypes, as well as gender equality policy-making mechanisms.

The European Employment Strategy,[9] a key component of the Lisbon Strategy, represents the center of EU policy through its objectives of full employment, quality of work and productivity, employment and social cohesion. A well functioning labor market should be gender inclusive, reduce the long-term unemployment that women are more subjected to than men and address women's financial dependence by reducing the gender pay gap. Without these minimum requirements with regard to women's presence in the labor market, the European Employment Strategy will be significantly less successful. Since 1995 the European Commission has adopted a dual approach regarding the articulated promotion of gender equality. Such an approach consists of a balanced combination of specific policy measures in favor of the under-represented sex, and of a structured gender mainstreaming policy. In the Amsterdam Treaty, the EU committed itself to mainstreaming gender equality into all policies and expressly recognized positive action in favor of the unrepresented sex in professional activity. However, evidence shows clearly that sexism and discrimination against women are unfortunately still well established in professional life.

2. Key Debates over Gender Equality Legislation

2.1 Revising the 1976 Equal Treatment in Employment Directive

Taking into account the new developments generated by the Amsterdam Treaty, the case law developed by the European Court of Justice in the last years and the need for connecting a relatively old legal language to the new social realities, the 1976 Directive on Equal Treatment in Employment was amended by a Directive in 2002.[10] The revision process was also influenced by the adoption of similar legislation in the field of

[9] For more details, see http://europa.eu.int/comm/employment_social/employment_strategy/index_en.htm.

[10] Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the Implementation of the Principle of Equal Treatment for Men and Women as Regards Access to Employment, Vocational Training and Promotion, and Working conditions. See *Official Journal* L 269 of 05.10.2002, pp. 0015–0020, full text available at http://europa.eu.int/eur-lex/pri/en/oj/dat/2002/l_269/l_26920021005en00150020.pdf.

anti-discrimination.[11] The Directive 2002/73/EC has achieved some critical and important elements in relation to equal treatment of women and men, such as preventing sexual harassment, safeguarding women's and men's rights on their return from maternity and paternity leave, protecting victims of harassment and sexual harassment, and setting up national governmental bodies to promote equal treatment of women and men.

2.1.1 Changes Introduced by Directive 2002/73/EC

2.1.1.1 Definition of Sexual Harassment

For the first time at the EU level, the social reality of sexual harassment is legally defined as a situation in which "any form of unwanted verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading or offensive environment."[12] According to the legal wording of Directive 2002/73/EC, sexual harassment within the meaning of this Directive is a form of sex-based discrimination.

2.1.1.2 Proactive Measures to Prevent Sexual Harassment in the Workplace

According to Article 2(5) of the revised Directive, based on national law, collective agreements or practice, the Member States shall encourage "employers and those responsible for access to vocational training to take measures to prevent all forms of discrimination on grounds of sex, in particular harassment and sexual harassment in the workplace." In this regard, the Member States are required to introduce measures to prevent sexual harassment in the workplace, by encouraging employers to promote equal treatment for women and men in a planned and systematic way, and to also draft equality plans on a regular basis. In accordance with their national legislation, Member States shall take measures to promote social dialogue in order to enhance the equal treatment enforcement aspects, "including through the monitoring of workplace

[11] Council Directive 2000/43/EC Implementing the Principle of Equal Treatment Irrespective of Racial and Ethnic Origin (*Official Journal* L 189 of 19.7.2000, pp. 0022–0026); Council Directive 2000/78/EC Establishing a General Framework for Equal Treatment in Employment and Occupation (*Official Journal* L 303 of 2.12.2000, pp. 0016–0022), prohibiting discrimination on grounds of religion and belief, disability, age and sexual orientation in the labor market.

[12] Directive 2002/73/EC, Article 1(2) (replacing Article 2(2) of the amended Directive 76/207/EEC).

practices, collective agreements, codes of conduct, research or exchange of experiences and good practices."[13]

2.1.1.3 Protection for Women on Maternity Leave and Extending Protection to Adoptive Parents

The reinforcement of protection for women on maternity leave and extending protection to adoptive parents in those Member States that recognize such rights[14] represent further innovative elements contained in Directive 2002/73/EC. In relation to the legal provisions on maternity leave, the links with Directive 92/85/EC[15] have been clarified by reinforcing the right of women who have given birth to return to their job, or to an equivalent position.

2.1.1.4 National Bodies to Promote Equal Treatment for Women and Men

Directive 2002/73/EC establishes the framework for setting up an independent body or bodies at the national level that contribute to the "promotion, analysis, monitoring and support of the equal treatment of all persons without discrimination on the grounds of sex."[16] The minimum requirements set out by Directive 2002/73/EC for the independent body/bodies designed to promote the principle of equal treatment focus on:

- pursuing claims on behalf of victims of discrimination through an administrative or judicial procedure;
- conducting independent surveys concerning discrimination; and
- publishing independent reports and making recommendations on any issues relating to discrimination.

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[13] Directive 2002/73/EC, Article 1(7) (adding Article 8b(1) to the amended Directive 76/207/EEC).

[14] Directive 2002/73/EC, Article 1(2) (replacing Article 2(7) of the amended Directive 76/207/EEC).

[15] Council Directive 92/85/EEC of 19 October 1992 on the Introduction of Measures to Encourage Improvements in the Safety and Health at Work of Pregnant Workers and Workers Who Have Recently Given Birth or Are Breastfeeding, *Official Journal* L 347 of 28.11.1992, available through the Celex website.

[16] Directive 2002/73/EC, Article 1(7) (adding Article 8a(1) to the amended Directive 76/207/EEC).

2.1.2 The Impact of the Revised 1976 Equal Treatment in Employment Directive

Taking into consideration the legal standards provided for in the revised Directive, there are concrete legal provisions available for Member States to enhance their national legislation on equal treatment in relation to employment. However, in light of the first report to be presented by the Commission to the European Parliament and the Council on the implementation of this Directive, it will be crucial how Member States agree to put in practice the established legal standards, especially in terms of providing specific instruments to implement the Directive, such as:

- establishing monitoring procedures to observe workplace practice in terms of reducing sex based discrimination in employment;
- elaborating methods for encouraging employers to provide information on equal treatment for women and men at regular intervals;
- making procedures available at the national level for establishing independent governmental bodies with adequate competence for promoting and monitoring equal treatment without discrimination based on sex, as well as articulated mechanisms for assuring the real independence of these bodies;
- promoting explicit and consistent procedures on behalf of governmental institutions in the Member States to ensure dialogue with the appropriate non-governmental organizations which have a legitimate interest in contributing to the fight against discrimination on grounds of sex. In this regard, evidence from non-governmental organizations in the Member States shows that this cooperation is usually rather formal. In addition, particularly in the ten new Member States, the meaning of "non-governmental organization having a legitimate interest in contributing to the fight against sex based discrimination" in national legislation is not always clearly agreed upon.

As stipulated in Article 2 of the Directive, Member States shall bring into force legal regulations and administrative measures necessary to comply with Directive 2002/73/EC by October 5, 2005 at the latest. Furthermore, the Member States are to provide the Commission with all the information necessary for the Commission to report to the European Parliament and the Council on the application of this Directive within a three-year period.

2.2 Simplification and Improvement of Legislation in the Area of Equal Treatment between Women and Men: The Recast Directive

In order for the secondary legislation on equal opportunities and equal treatment for women and men to integrate the case law developed by the European Court of Justice and the legal developments generated by the Amsterdam Treaty, to be more readable and to assure more legal clarity, a simplifying and updating process was initiated in 2003. To this end, an Options Paper was prepared so that various interested stakeholders would be informed of the possible approaches to be undertaken for improving the legislation in the field of equal treatment between women and men.[17] A web consultation was also launched. The results of the web consultation, as well as the results of the informal meeting held with experts from Member States, EFTA countries and Accession Countries indicated that the recasting option would be the best solution. Besides the clear presentation of the legal provisions in a single improved text, a necessary achievement of the recasting approach would also be "the necessary support to accelerate the effective implementation of equal treatment in order to reach Community socio-economic policy goals."[18] The need for simplifying and clarifying the existing legislation was also endorsed by the conclusions of the November 2004 Expert Conference dedicated to the *Progressive Implementation and New Developments in European Gender Equality Law* as follows: "From the legislative point of view, it can be said that an already large body of legal texts exists. However, it is quite chaotic and made largely of incoherent bits and pieces. This results in individuals being unable to make sense of their rights and duties. Not only individuals are confused, but also experts who are supposed to work with legislation and apply in everyday practice."[19]

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[17] European Commission, *Simplification and Improvement of Legislation in the Area of Equal Treatment between Men and Women* (Brussels: EC Employment and Social Affairs DG, 2003), the Options Paper is available at http://europa.eu.int/comm/employment_social/news/2003/jul/consultation_en.html. The options proposed for the legislative clarification were: a) consolidating the legislation on equal treatment between women and men, defined as a rather mechanical process, without altering the initial texts; b) codifying the legislation on equal treatment between women and men, by bringing the texts together in a coherent new single legal text, by deleting overlapping legal provisions; c) recasting the legislation on equal treatment between women and men, which implies the elaboration of a new legal text that incorporates both the amendments brought to the previous act and the provisions that remain unchanged.

[18] European Commission, *Proposal for a Directive of the European Parliament and of the Council on the Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation* (recast version) (Brussels: European Commission, April 21, 2004), p. 5, available as COM(2004)279/final at http://europa.eu.int/eur-lex/en/com/pdf/2004/com2004_0279en01.pdf.

[19] Expert conference on *Progressive Implementation and New Developments in European Gender Equality Law*, the Hague, Netherlands, November 18-20, 2004, Conclusions Paper.

The current approach on simplifying and clarifying the equal treatment for women and men legislation is vital for a harmonious settlement of the legal standards in the matter of employment and occupation, and for charting the progress of addressing the issues under discussion as they were interpreted by the European Court of Justice. In this regard, among the innovative aspects to be comprised into the new recast Directive, the proposed extension of the gender mainstreaming obligation to the other areas of equal treatment covered by the proposal, and the proposed extension of the burden of proof to all areas falling within the material scope of the proposal are of particular importance.[20] The recasting of the Directive in relation to the principle of equal pay for work of equal value was expressed as particularly important.

The 1975 Directive on Equal Pay does not reflect the interpretation of the concepts of 'equal pay' and 'work of equal value' in the recent developments of the European Court of Justice. The Court has stated that the concept of 'work of equal value' implies the same remuneration for women and men, and as such male and female workers shall be in comparable situations. "In this context the principle of equal pay […] does not preclude the making of a lump-sum payment exclusively to female workers who take maternity leave where that payment is designed to offset the occupational disadvantages which arise for those workers as a result of their being away from work[21], because their particular situation due to maternity cannot be compared with that of female workers."[22]

The new Directive proposal is structured in five titles, containing a very important title on horizontal provisions referring to the defense of rights and bodies for the promotion of equal treatment and social dialogue. It is important to observe that the national bodies established in the Member States as they were described by Directive 2002/73/EC in matters related to access to employment, vocational training and promotion and working conditions, shall also cover matters related to pay and social security schemes. The recast Directive was on the 2004 December agenda of the Council of the European Union, together with the decision on the programs concerning gender equality and the topic of the implementation of the European Union of the Beijing Platform for Action.

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20 As these aspects were inserted by the Directive 2002/73/EC.

21 Judgment of the Court of September 16, 1999 in Case C-218/98, *Oumar Dabo Abdoulaye and Others v Regie nationale des usines Renault SA*, ECR 1999 I p. 5723.

22 European Commission, *Proposal for a Directive,* op. cit. p. 8

2.3 Gender Equality outside the Labor Market: The Article 13 Directive

In the 2000 European Commission's Communication setting out a Community framework strategy on gender equality,[23] under the objective of promoting equal access and full enjoyment of social rights for women and men, the first indicated action was established for proposing a Directive based on Article 13 of the Amsterdam Treaty, aimed at ensuring equal treatment for women and men in matters other than occupation and employment. On November 5, 2003 a proposal for a Council Directive based on Article 13 of the EC Treaty, focusing on the prohibition of discrimination on grounds of sex in the access to and provision of goods and services, was presented by the European Commission.[24] The negotiations between Member States were long and difficult and a political agreement was reached under the Dutch Presidency of the European Union in October 2004.[25] Due to a strong resistance from different interest groups and the lack of agreement within the Commission itself, other areas of economic, social and political life were left outside the proposed Directive. The proposal of the new Directive is also known as the 'Article 13 Directive', as it is issued based on Article 13 of the Treaty establishing the European Community.[26]

Prior to proposing the Article 13 Directive, the Community legal framework was limited to the sphere of employment, although it is documented that sex-based discrimination does not take place only within the labor market. In relation to the subject matter, the proposed Directive shall be applied to "all persons in relation to the access to and the supply of goods and services which are available to the public, including housing, as regards both the public and private sectors, including public bodies."[27] It also stipulated that the Directive shall not be applied to education or the content of media and advertising, in particular television advertising.

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[23] European Commission, *Towards a Community Framework Strategy on Gender Equality,* op. cit., p. 10.

[24] European Commission, *Proposal for a Council Directive Implementing the Principle of Equal Treatment between Women and Men in the Access to and Supply of Goods and Services* (Brussels: EC Secretariat General, November 5, 2003), available as COM(2003)657/final at http://europa.eu.int/comm/secretariat_general/impact/docs/ com_2003_0657_f_en.pdf.

[25] With the abstention of Germany.

[26] The legal provision of the Article 13 of the Treaty establishing the European Community empowers the Council acting on unanimous basis on a proposal from the Commission, and after consultation with the European Parliament, to take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

[27] Article 1 on Subject Matter and Scope, Chapter I on General Provisions, see European Commission, *Proposal for a Council Directive*, op. cit.

With the occasion of the debate launched by the European Parliament on the content of the proposed Directive, representatives of non-governmental organizations dealing with gender, media and advertising raised the topic of protecting the dignity of women and men as a matter to be covered by the new legal text. They also highlighted the practices in the field of education, where boys and girls are still seriously affected by gender roles and gender stereotypes, especially in choosing their career. Representatives of media, however, argued that any attempt of regulating the media content would be equivalent to infringing upon media freedom. The debate on these aspects was far from adequately addressed in order to reach the consensus necessary for a new legal text regulating the fields of education and media from a gender equality perspective. Therefore, the Commission decided that "it should *not* now make proposals which would deal with the areas of education, taxation or the content of the media."[28] Despite the unfortunate political message transmitted by the Commission in adopting such a position, it remains optimistic that civil society is able to indicate the problematic areas that should be addressed by new legal initiatives in the field of gender equality. Another optimistic message is the approach initiated by various EU bodies that will benefit from the input of stakeholders active in the field of gender equality.

In terms of the subject matter proposed by the Article 13 Directive, the term 'services' refers to services provided against payment. The principle of prohibiting discrimination in the area of goods and services implies that all direct and indirect discrimination is prohibited, including unfavorable treatment due to pregnancy and maternity. Also, according to the Article 2 of the proposed text, "incitement to direct and indirect discrimination on grounds of sex shall be deemed to be discrimination within the meaning of this Directive." In terms of the minimum requirements established by the proposed Directive, it is stipulated that while Member States can introduce or maintain provisions that are more favorable than those laid down, the Member States cannot reduce the level of protection already granted in the fields covered by the Directive. According to the legal text, the use of sex as a factor in the calculation of premiums and benefits for insurance and related financial services shall be prohibited.

On December 13, 2004, the Council of the European Union, based on the political agreement reached on October 4, 2004,[29] unanimously adopted the Directive implementing equal treatment between women and men aimed at extending the principle of equal treatment beyond the area of employment and professional life to

[28] European Commission, *Proposal for a Council Directive,* op. cit., p. 5.

[29] Council of the European Union, *Employment, Social Policy, Health, and Consumer Affairs, 2606th Council Meeting*, Press Release No 12400/04, Luxembourg, October 4, 2004, available at http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/lsa/82125.pdf.

other areas of everyday life.[30] According to the press release of the Council of the European Union, under this Directive the prohibition of discrimination will apply to the persons providing goods and services available to the public and offered outside the area of private and family life. The Directive will apply to both direct and indirect discrimination, including sexual harassment. Direct discrimination will also include less favorable treatment of women due to pregnancy or maternity. Furthermore, it is highlighted that in any event, costs related to pregnancy and maternity should not result in differences in premiums and benefits.

3. Economic and Social European Agenda: Putting Gender Equality into Practice

It is often affirmed in EU documents that the transposition of EU legislation concerning gender equality for women and men is an indispensable condition for EU membership, as it represents an integral part of the human rights paradigm and is a necessary condition for effective institutional development. In terms of social affairs, gender equality has become one of the important components of the European social agenda. It has been stated in various EU documents that Europe needs more and better jobs in order to become the most competitive economic market in the world. In relation to economic growth, it is also obvious that increased female participation in the labor market increases the gross domestic product, since more people are involved in the production system.

Accordingly, both within the human rights paradigm and from an ambitious economic approach, the real achievement of gender equality appears to be an agreed and vital aspect that must be addressed. Both legislation and social and economic policies offer specific instruments and a basis for putting gender equality into practice. However, when examining the human rights perspective, important correlated aspects such as *violence against women* and *trafficking in women* – both of which have important, negative economic consequences – have been left out of the legally binding framework. In terms of social and economic policies, the gender pay gap is still a reality, as well as the lower female employment rate. As the legal aspects were addressed above, this section focuses on gender equality in the economic and social European agenda.

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30 Council of the European Union, *Equality between Women and Men Extended to the Access and Supply of Goods and Services*, Press Release No 15856/04, Brussels, December 13, 2004, available at http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/misc/83078.pdf or http://europa.eu.int/rapid/pressReleasesAction.do?reference=pres/04/350&format=html.

3.1 Gender Equality, the European Employment Strategy and the Lisbon Strategy

The European Employment Strategy was launched in 1997, following the introduction within the Amsterdam Treaty of a new title on employment. Essentially, the EES is designed to assure coordination of the Member States' employment policy priorities in line with the common priorities established at the EU level by the European Council. The agreement of the Member States to establish common objectives for employment and to coordinate their national employment policies is articulated around several important components. The Employment Guidelines are set up by the European Council and contain common recommendations in terms of employment policies to all Member States, as well as country-specific recommendations. The National Action Plans on Employment describe how the guidelines are put into practice at the national level. These documents are extremely important for observing to which extent gender equality remains on the employment agenda and to document the evolution of female employment, as well as the consistency of social policies in relation to gender equality. It is to be noted that until 2003, the Employment Guidelines were grouped under four pillars, namely: *employability*, *entrepreneurship*, *adaptability* and *equal opportunities for women and men*. As such, the matter of equal opportunities for women and men was specifically stated as a priority of the Employment Guidelines. Unfortunately, the 2003 Adopted Employment Guidelines,[31] starting *inter alia* from the Lisbon target,[32] established three new employment-related objectives: *full employment*, *improving quality and productivity at work*, and *strengthening social cohesion and inclusion*. These three objectives include a further ten specific guidelines on improving governance of employment policies. The sixth one of these is *gender equality*. Through such an employment policy accent move, gender equality unfortunately risks disappearing as a priority. On the occasion of the proposed changes, the European Women's Lobby[33] promptly reacted by stating: "The integration of a specific pillar of equal opportunities in the European Employment Strategy launched at the Luxemburg Summit in 1997 was a crucial step for achieving equality between women and men. To keep gender

[31] Council Decision of 22 July 2003 on Guidelines for the Employment Policies of the Member States (2003/578/EC), *Official Journal* L 197 of 5.8.2003, pp. 0013–0021, available at http://europa.eu.int/eur-lex/pri/en/oj/dat/2003/l_197/l_19720030805en00130021.pdf.

[32] The Lisbon European Council held on March 23 and 24, 2000 set a new strategic goal for the European Union to become the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and great social cohesion.

[33] For more on the European Women's Lobby, a coordinating body of national and European non-governmental women's organizations in the European Union, see the EWL website at http://www.womenlobby.org/doclist.asp?SectionID=7.

equality focus in the European Employment Strategy remains essential in order to promote women's employment and to achieve equality of women and men."[34] Furthermore, the European Women's Lobby highlighted one of the most important aspects in relation to the Member States actions in terms of keeping gender equality on the economic and social agenda: "The experience of the last five years in the implementation of the European Employment Strategy clearly demonstrates that if gender is not integrated in the EU guidelines there is no transposition and integration into the National Action Plans at Member States level." At the time of establishing the three new objectives of the employment guidelines, signals already appeared that the Lisbon targets to be met in 2010 are about to be missed. As such, the new employment guidelines were articulated as a 'speeding up' solution for a more competitive labor market. Therefore, it can be stated that the gender equality was given a different, (lower) priority within the employment strategy, in preference of more general solutions for accelerating the development of the employment market. Ultimately, such an approach is difficult to be understood, as increasing the female presence in the labor market is a solution activating a significant workforce on behalf of more than half of the European population.

In order to advance gender equality in the EU and to meet Lisbon targets for women, the implementation of the following measures are needed:

- reform of the wage bargaining system;
- promotion of affordable child care facilities in preference to greater child benefits;
- implementation of more flexible labor market regulations, especially as regards part-time employment;
- enhancement of the enforcement of equal treatment legislation; and
- implementation of market reforms, so as to enable the expansion of sectors in which female employment is concentrated.

3.2 Gender Mainstreaming within the European Union: A Political Process

As disequilibrium between women and men continues to mark daily life in the EU space and the countries still in accession, it became obvious that new approaches and strategies should be employed in order to reach gender equality. It is stated that the

[34] European Women's Lobby, *Employment Guidelines for 2003: Concrete Proposals on How to Strengthen Specific Gender Equality Focus and the Gender Equality Mainstreaming Approach* (Brussels: EWP, May 6, 2003), available at http://www.womenlobby.org/Document.asp?DocID=589&tod=182743.

issue of gender equality needs to be addressed at a more structural level, by involving a large number of social actors. Articles 2 and 3 of the Amsterdam Treaty retain equality between women and men as one of the main tasks of the Community, and retain the promotion of gender equality into all the activities set out by the Community as a transversal objective.[35] Therefore, it can be stated that gender mainstreaming has become a legal obligation for the Member States.

It is to be noted that the concept of gender mainstreaming was given a lower priority in the debate around gender equality within the EU space compared with the years following the 1995 Fourth World Conference on Women. It could be argued that gender mainstreaming did not loose its place in public discourse, but after the time of its conceptualization at the end of the 1990s it started to be put in practice. However, it should be mentioned that the European Commission 2004 Report on equality for women and men still underlines that there is a need "*to reinforce the implementation of gender mainstreaming* in all relevant policy fields, including in employment and social policies, education, research, external relations, development cooperation, budget and financial policies."[36]

Furthermore, in terms of the political dimension of gender mainstreaming, the Member States governments are to issue political statements indicating the commitment to mainstream gender equality into all policies and programs, and underlining the objective of achieving gender equality. Such commitment is to be complemented by clear criteria for gender mainstreaming aimed at helping the social actors to integrate it. In this picture, it is clear that "Effective gender mainstreaming cannot be achieved without:

- explicit political will and institutional commitment at the highest level to the gender mainstreaming strategy, including systematic efforts to implement it;
- full engagement with the gender mainstreaming process from leaders and managers within the services, including clear lines of accountability and responsibility;
- development of adequate institutional capacity and expertise to carry out gender mainstreaming strategies;
- adequate budgets that support the people as well as the programs; and

[35] See http://europa.eu.int/comm/employment_social/equ_opp/strategy/3_en.html.

[36] European Commission, *Report on Equality between Women and Men, 2004* (Brussels: EC Employment and Social Affairs DG, February 19, 2004), p. 10, available as COM(2004)115/final at http://europa.eu.int/comm/employment_social/equ_opp/com_04_115_en.pdf.

- ensuring the integration of a gender equality analysis and objectives in EU macro-economic policies and trade policies."[37]

Gender mainstreaming cannot replace equality policy strategies, but rather ought to complement them, by having the same goal of reaching gender equality. Especially in the context of enlarging the EU and of adopting the *Acquis Communautaire,* there is much space for political and institutional renewal in relation to gender mainstreaming. Current changes at the economic, political and institutional level, based on the request of adopting the legal obligations as generated by the Amsterdam Treaty in terms of gender mainstreaming, leave space open in the new Member States, as well as in the still accession countries, to really integrate this concept.

In terms of facilitating the process of integrating gender mainstreaming into the policies, the European Commission issued a practical guide[38] aimed to offer advice to the future member states on mainstreaming gender into the Joint Memoranda on Social Inclusion. The guide offers practical suggestions on mainstreaming gender in each step of the Memoranda. The Joint Memoranda on Social Inclusion for the ten countries joining the Union in 2004 were formally signed by the Commission and the national authorities on December 18, 2003. Work on the Joint Memoranda on Social Inclusion for Bulgaria and Romania is currently completed. Furthermore, the Joint Memoranda on Social Inclusion are laying down the ground for the National Action Plans on Social Inclusion, issued at every two years. Having as a starting point the practical guide issued by the Commission it can be stated that the topic of gender mainstreaming is incorporated only in very few of the Joint Memoranda on Social Inclusion (Estonia, Latvia and Cyprus).[39] Lithuania and the Czech Republic have integrated the gender dimension in a number of employment policies and programs. In Hungary, Poland and Slovak Republic it is appreciated that increased awareness on gender equality gave a political impulse to policies regarding women's access to the labor market.

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[37] European Women's Lobby, *EWL Proposals for the New Social Policy Agenda, 2006–2010* (Brussels: EWL, October 28, 2004), available at http://www.womenlobby.org/Document.asp?DocID=824&tod=152858.

[38] European Commission, *Gender Mainstreaming in the Joint Inclusion Memoranda for Future Member States: Practical Guide* (Brussels: EC Employment and Social Affairs DG, 2003), available at http://europa.eu.int/comm/employment_social/equ_opp/gmprac_guide_en.pdf.

[39] European Commission, *Social Inclusion in the New Member States: A Synthesis of the Joint Memoranda on Social Inclusion*, a Commission Staff Working Paper (Brussels: European Commission, June 22, 2004), available as SEC(2004)848 at http://europa.eu.int/comm/employment_social/soc-prot/soc-incl/sec_04_848_en.pdf.

On the occasion of the European Commission's paper on synthesizing the Joint Memoranda on Social Inclusion,[40] several recommendations were made in order to further mainstream gender in the National Action Plans:

- create a policy context combining legal provisions, political will and the formulation of clear goals;
- build an awareness-raising capacity including training and expertise all along the process; and
- establish adequate institutional mechanisms, keeping in mind that the ultimate institutional mechanisms are new ways of working, planning and implementing policies.

The ten new Member States submitted their first 2004–2006 National Action Plans on Poverty and Social Inclusion in July 2004.[41] The rather vague recommendations listed above did not, unfortunately, generate an adequate image on gender mainstreaming in terms of social inclusion. The only Member States that explicitly retain gender mainstreaming as a priority are Lithuania and the Czech Republic. The National Action Plan submitted by Lithuania also explicitly addresses proposed measures on ensuring the reconciliation of professional and family life.

A Joint Report by the Commission and the Council on social inclusion in the fifteen Member States was also issued in March 2004.[42] The Report highlights the fact that the use of gender issues as a tool to serve anti-poverty policies is prevalent in most National Actions Plans submitted. There is a special note on the use of gender issues as means to achieve priority objectives such as fighting child poverty or family crises with the risk of neglecting gender equality. However, it is also stated that for most Member States, their National Action Plans do not mention the mechanisms used to integrate gender issues, which makes it difficult to assess the sustainability of their commitment in this regard. In terms of quantitative targets segregated by sex, very few Member States have engendered specific quantitative targets apart from the targets already set in the European Employment Strategy. Sweden specifies most of its targets in relation to men and women. Germany has gender targets for IT training and internet usage. Austria intends to close gender gaps related to the minimum pension. Greece has an

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40 Ibid.

41 European Commission, *National Action Plans on Social Inclusion* (Brussels: EC Employment and Socail Affairs DG, 2001–2004), available at http://europa.eu.int/comm/employment_social/news/2001/jun/napsincl2001_en.html.

42 Council of the European Union, *Joint Report by the Commission and the Council on Social Inclusion* (Brussels: Council of the European Union, March 5, 2004), available at http://europa.eu.int/comm/employment_social/soc-prot/soc-incl/final_joint_inclusion_-report_2003_en.pdf

indirect gender target with respect to childcare, and the UK quantified targets on single parents and teenage pregnancies.

As an overall assessment of the concrete ways of building gender mainstreaming as a strategy complementary to traditional equality policies, it is to be noted that in most of the twenty-five current EU Member States gender mainstreaming is weak outside of employment issues. This reveals a fragmentary intensification of gender mainstreaming and shows that much still needs to be done. Limiting the feminization of poverty, as well as improving women's access to vocational education and enhancing the child care system as a part of reconciling family and working life, would benefit from strong social measures. Also, it is relevant to observe that the efforts towards aligning with the EU social inclusion process on behalf of the new Member States is very complex and requires a lot to be done in a relatively short period of time. In such a context, gender mainstreaming appears to be somehow sacrificed in the new Member States in favour of other burning social policy aspects.

3.3 Mainstreaming Gender within the Structural Funds: A Financial Commitment to Gender Equality

The European regional policy is perceived as a solidarity policy, designed to reduce through its specific financial instruments the gaps in development among the regions and among the citizens. The principle of solidarity as the background of the regional policy is primarily expressed through the four Structural Funds.[43] Each Structural Fund has its own specific thematic area of interest. As the European Social Fund promotes the return of the unemployed and disadvantaged groups to the workforce market, mainly by supporting training measures and recruitment systems, it is to be underlined that it represents one of the most important financial instruments for getting financial support for gender equality. Through the European Social Fund objectives, the main dimensions of the European Employment Strategy are put into practice at the national level of the Member States, by modernizing the workforce skills and fostering the entrepreneurship initiatives. In this regard, as the employability level represents one of the main tasks of the European Structural Fund, and as the female employability is significantly lower than the male one throughout the EU, it can be concluded that a consistent gender mainstreaming of the European Social Fund represents a major catalyst for putting gender equality into practice.

The general approach of gender mainstreaming within the four structural funds is described in a Communication adopted by the Commission on December 12, 2002 on

[43] The European Regional Development Fund; the European Social Fund; the Financial Instrument for Fisheries Guidance; and the European Agricultural and Guarantee Fund.

the *Implementation of Gender Mainstreaming in the Structural Funds: Programming Documents for 2000–2006*.[44] As a very important step forward in terms of financial commitment to gender equality it has to be noted that if before December 2002 the Structural Funds only supported specific measures for women or pilot projects, after December 2002 gender equality was mainstreamed within Structural Funds. In other words, the gender equality dimension has been incorporated within the planning, implementation, monitoring and evaluation of the financed programs and projects throughout the process of managing the Structural Funds. However, the Structural Funds can only address the national EU Member States' set up policies. Furthermore, the impact of effective funding relies on the level of clear political and financial commitment of every Member State to gender mainstreaming and thus, to gender equality. As it appears not to be a specific political and financial commitment oriented towards gender mainstreaming within the National Action Plans for Employment and for Social Inclusion, by setting up clear priorities in terms of gender mainstreaming and in terms of financing indicators for measuring progress in the field, it might be expected that advancing gender equality will not benefit much from using the financial instruments provided by the Structural Funds.

The potential offered by mainstreaming gender in organizing, improving, developing and evaluating the policy process so that a gender equality approach is incorporated in all policies at all levels is huge. Gender mainstreaming represents a vital strategy as it connects women to the heart of the policy-making process and the policies are thus better constructed in terms of the real needs of women and men. Ultimately, gender mainstreaming leads to better governance and facilitates full use of human resources. Such results are in line with the economic and social goals of the EU established for this decade. However, undertaken without attention, gender mainstreaming is a strategy that can easily be weakened and transformed into tokenism where public commitment is given in principle, but where in practice very little is achieved.

4. What Has Not Yet Been Achieved

Despite important progress and even if women in Europe obtained *de jure* equal rights and equal opportunities with men, new forms of inequality have developed. The structural changes that have been occurring in Europe for almost two decades as a consequence of globalization and increasing liberalization have been followed by

[44] European Commission, *Implementation of Gender Mainstreaming in the Structural Funds Programming Documents, 2000–2006* (Brussels: EC Employment and Social Affairs DG, December 20, 2002), available as COM(2002)748 final, at http://europa.eu.int/comm/employment_social/equ_opp/com02748_en.pdf.

aggregated social problems that generate unemployment, depreciation of human work, social exclusion and the pauperization of parts of societies. These aspects affect women and men differently and lead to the removal of gender equality as a priority in the social agenda in preference of more difficult policy areas.

4.1 Still No Equal Pay for Work of Equal Value

Despite the adoption of the 1975 European Directive on Equal Pay for Women and Men as Employees, many women today are still paid much less than men for identical work. The European Parliament has repeatedly criticized national governments for their application of the 1975 Directive and has pressed the European Commission to take more decisive action. In the *Community Framework Strategy on Gender Equality (2001–2005)*[45] adopted in 2000, the European Commission set up as an operational objective the need for reviewing and improving the 1975 Equal Pay Directive, particularly by looking at the functioning of legal remedies and reinforcing the role and powers of the labor inspectorate bodies with regard to equal pay legislation. Through the proposed simplification process and through the recast Directive on the implementation of the principle of equal opportunities and equal treatment of women and men in matters of employment and occupation, the 1975 Equal Pay Directive will be repealed. However, the legal change in the sense of reinforcing the powers of the state labor inspectorate does not appear to be part of the proposed recasting process.

The gender pay gap is still significant in the new Member States and, "as compared to men, women have a limited access to managerial positions in companies and to high-skilled jobs."[46] Regarding the gender pay gap within the old Member States, it is indicated that many Member States "present a range of measures which would have a positive impact in reducing the gender pay gap, but more actions are piece-meal, especially in countries with the highest gaps.[47] Many initiatives remain voluntary with a lack of evaluation of impact."[48] In relation to the gender pay gap, it can be stated that the legislation has still not achieved the impact needed to put the equal pay principle into practice. Establishing indicators for gender pay gap differentials would make it

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45 European Commission, *Towards a Community Framework Strategy on Gender Equality,* op. cit., p. 11.

46 European Commission, *Social Inclusion in the New Member States,* op. cit.

47 Germany, Portugal and Austria.

48 Council of the European Union, *Joint Employment Report 2003–2004* (Brussels: Council of the European Union, March 5, 2004), pp. 8–9, available at http://europa.eu.int/comm/employment_social/employment_strategy/report_2003/jer20034_en.pdf.

possible to create instruments for monitoring in this area. In this regard, the gender pay gap should be made visible at the individual level, not only at the systemic level.

The tax system has different consequences for women's participation in the labor market. In the first instance, they reduce the women's incentive to work, as long as real wages are not attractive after taxation. In addition, taxes can stimulate the female labor participation by providing an infrastructure that would facilitate women's integration into the labor market. In this regard, if there are social measures designed to create and enhance an affordable and trustful child care system, the female employment level will increase. Such a measure is a very concrete and specific example of reconciling work and family life, with significant consequences for increasing the female employment rate, and then, through a more powerful work force, economic growth. In addition, such measures would make it easier to counteract the worrying falling birth rates throughout the European Union. The reality of the low birth rates is, *inter alia*, a sign that women do not believe they can combine motherhood and professional life, since they perceive this combination as not being financially beneficial.

In conclusion, "In law, if not always fully in fact, the EU legislation on the principle of equal pay between men and women has been implemented relatively successfully in the national legal systems" of all Member States and still Accession Countries. However, "despite efforts to provide better enforcement mechanisms in order to combat pay discrimination at national level […], the gender pay gap has remained unchanged since the implementation of equal pay legislation."[49]

4.2 Persistence of the Gender Employment Gap

According to the situation provided by the 2003/2004 Joint Employment Report issued by the Council of the European Union,[50] "in 2002, the employment rate of women in the EU 15 Member States increased slightly from 55 percent to 55.6 percent reducing the employment gender gap to 17.2 percent". For the new Member States, the gender gaps in employment are smaller (12 percent). "However, female employment rates fell or stagnated in most of the new Member States in recent years despite economic recovery."[51]

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[49] European Commission, *Bulletin on Legal Issues in Gender Equality*, No 1/2004 (Bulletin of the Commission's network of legal experts on the application of Community law on equal treatment between women and men) (Brussels: EC Employment, Social Affairs and Equal Opportunities DG, September 2004), p. 7, available at http://europa.eu.int/comm/employment_social/equ_opp/newsletter/bulletin04_1_en.pdf.

[50] Council of the European Union, *Joint Employment Report 2003–2004*, op. cit., p. 44.

[51] European Commission, *Social Inclusion in the New Member States,* op. cit., p. 14.

In March 2000 the European Council in Lisbon set out a ten year strategy aimed to make the EU the world's most dynamic and competitive economy. In this regard, the Lisbon Strategy is perceived as one of the main tools to bring economic and social impetus to the EU and the EES represents a key component of the Lisbon Strategy. In such a picture, women's role is critical, as they represent more than half of the EU population. Overall, the Lisbon strategy implies concentrated efforts both to improve labor market performance and to raise the productivity level, aspects subsumed to the reality of "more and better jobs." With a socially unacceptable high unemployment, raising employment is a policy priority not only for the old, but also for the new EU Member States. Therefore, one of the targets set up by the Lisbon strategy is given by an overall employment rate close to 70 percent and a female employment rate over 60 percent by 2010.

In relation to social cohesion, the Lisbon strategy generates a quite clear line, calling for the modernization of social protection system by stating that "The best safeguard against social exclusion is a job." Such a statement is applicable to women more than ever. It is true that the female employment rate has increased over the last decade as a result of increased female labor participation. However, the participation of young women in education or the labor force is barely below that of young men, while young women are better educated than their male counterparts. "Women – especially married women and those with children – are still less attached to the labor market on average than men."[52]

The change in social norms regarding gender roles has had clearly positive consequences on female employment. In addition to reducing the gender roles lens, another critical aspect related to increasing women's employment is shown by the need to reconcile family and professional life. In most EU countries, women try to postpone their first child, planning motherhood in order to somehow reconcile family and professional life. Empirical evidence shows that enhancing the level of the affordability of the childcare system raise women's labor participation. However, female participation in the labor market benefits from concrete social measures aimed at a successful reconciliation of work and family life. The employment rate of married women is higher in those EU Member States providing affordable childcare facilities.

The gender wage gap reduction represents a determining factor for increasing female participation in the labor market and might have important consequences on reducing gender discrimination. Currently, gender segregation by industrial sectors and low

[52] European Commission, *The EU Economy: 2004 Review* (Brussels: EC Economic and Financial Affairs DG, October 26, 2004), p. 134, available as ECFIN(2004)REP 50455-EN at http://europa.eu.int/comm/economy_finance/publications/european_economy/2004/ee604fullreport_en.pdf.

wages in female dominated sectors explain the existence of the still present gender pay gaps. Although there is a well-developed legal framework on equal pay and equal employment opportunities within the EU, there is still a substantial lag-behind in enforcement, as indicated by the number of lawsuits and the level of public awareness on these aspects.

4.3 Lack of Treaty Provisions or Directives on Violence against Women and Trafficking in Women

There are no Treaty Provisions or Directives specifically addressing violence against women and trafficking in women within the EU, although both represent realities politically acknowledged by the EU as major social phenomena. The European Commission has indicated that "[t]he prevention of and fight against domestic violence fall mainly under local and national competences and Member States should follow up developments by using the set of indicators on violence agreed by the Council of Ministers."[53] The seven indicators agreed by the Council of Ministers were put together in 2002 under the Danish Presidency, as follows:

1. profile of female victims of violence;
2. profile of male perpetrators;
3. victim support;
4. measures addressing the male perpetrator to end the circle of violence;
5. training of professionals;
6. state measures to eliminate violence against women; and
7. evaluation on progress made and lessons learned.[54]

The Danish Presidency developed these indicators based on extensive research carried out by the previous Spanish EU Presidency and also proposed the following definition for domestic violence: "Any physical, sexual or psychological violence, inflicted on a victim by a current or former spouse or intimate partner or other members of the family." It is to be noted though that while the Beijing Platform for Action addresses

[53] European Commission, *Report on Equality between Women and Men,* 2004, op. cit., p. 11.

[54] Council of the European Union, *Draft Council Conclusions on the Review of the Implementation by the Member States and the EU Institutions of the Beijing Platform for Action* (Brussels: Council of European Union, November 22, 2002), p. 4, available as 14578/02, SOC 546, JAI 267 at http://register.consilium.eu.int/pdf/en/02/st14/14578en2.pdf.

violence against women, the Danish Presidency only proposed a definition on 'domestic violence', and did not address all forms of gender-based violence.

Despite the fact that the European Commission has indicated that domestic violence remains under the national competence of Member States, European women's non-governmental organizations, including the European Women's Lobby, insist "that the EU deliver a proposal for a legal framework on violence against women with the aim of developing EU-wide binding policies and integrated strategies to tackle all forms of violence against women."[55]

The introduction in the draft European Constitutional Treaty of a Declaration on Combating All Kinds of Domestic Violence represented a very important step forward in terms of recognizing domestic violence within the EU. However, this Declaration "will have no legal status but represents a moral obligation and political will. The scope of the Declaration is limited in that it only refers to domestic violence. It would have been stronger if it referred to all forms of violence against women."[56] The Declaration is important because it could be perceived as another political step by the EU in coordinating efforts within the Member States in preventing and combating violence against women. In this regard, in terms of policies and programs, it is important to note that the new Daphne II Multi-Annual Program (May 2004–December 2008)[57] benefits from an increased budget of 50 Million Euros for supporting actions to prevent and combat violence against women in the Member States,[58] together with another two sets of beneficiaries, namely children and young people.[59] The Daphne II Program is a part of the series of programs designed to put cooperation in practice in the EU in the field of justice and home affairs and is offered as an EU funding

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55 European Women's Lobby, *Response to the European Commission Green Paper* (Brussels: EWL, September 9 2004), available at http://www.womenlobby.org/Document.asp?DocID=785&tod=123057.

56 European Women's Lobby, *Beijing+10. 1995–2005: Review of the Implementation of the Beijing Platform for Action by the European Union* (Brussels: EWL, November 2004), available at http://www.womenlobby.org/PDF/beijing-en.pdf.

57 Decision 803/2004/EC of the European Parliament and of the Council of 21 April 2004 adopting a Program of Community Action (2004 to 2008) to Prevent and Combat Violence against Children, Young People and Women and to Protect Victims and Groups at Risk (the Daphne II Program), *Official Journal* L 143 of 30.4.2004, pp. 0001–0008, available at http://europa.eu.int/eur-lex/pri/en/oj/dat/2004/l_143/l_14320040430en00010008.pdf.

58 European Commission, *Report on Equality between Women and Men,* 2004, op. cit., p. 11.

59 For more on the Daphne II Program, see http://europa.eu.int/comm/justice_home/funding/daphne/funding_daphne_en.htm.

opportunity to national authorities, professionals, academics, non-governmental organizations, etc.

In relation to trafficking in women, a Joint Action[60] was adopted by the Council in 1997 concerning action to combat trafficking in human beings and sexual exploitation of children. The language of the document is powerful in terms of the imperative measures needed to be taken by the Member States, in order to establish common rules for action to combat trafficking in human beings and sexual exploitation of children, and to improve judicial cooperation in criminal matters.

In this regard, Member States must undertake a review of the relevant national legislation and associated practice, in compliance with their constitutional rules, in order to ensure the following:

- Trafficking and sexual exploitation, as defined by the document, are classified as criminal offences.
- These offences are punishable by effective, proportionate and dissuasive criminal penalties.
- Appropriate protection for witnesses who provide information is assured, as well as protection for the victims and their families.
- Immigration, social security and tax authorities give special attention to the problems connected with trafficking in human beings and sexual exploitation of children.

In order to approximate the laws and regulations of the Member States in the area of police and judicial cooperation in criminal matters in relation to trafficking in human beings, the Council adopted a Framework Decision on 2002.[61] The Framework Decision introduces the concept of 'criminal and civil liability of legal persons' in parallel with that of natural persons for offences of trafficking in human beings. The Decision' objective is also to cover offences concerning trafficking in human beings not only for the purpose of sexual exploitation, but also for the purpose of labor exploitation.

In addition to the policy efforts oriented at the EU level for preventing and combating trafficking in women, it should be noted that an Experts Group on Trafficking in

[60] The Joint Action was amended by Council Outline Decision 2002/629/JHA of 19 July 2002 concerning trafficking in human beings.

[61] Council Framework Decision 2002/629/JHA of 19 July 2002 on Combating Trafficking in Human Beings, *Official Journal* L 203 of 01.08.2002, pp. 0001–0004, available at http://europa.eu.int/eur-lex/pri/en/oj/dat/2002/l_203/l_20320020801en00010004.pdf.

Human Beings was established in 2003.[62] The aim of establishing the Group was to provide the European Commission with expertise contained in reports or opinions relating to the prevention of and fight against trafficking in human beings.

Without doubt, the EU steps to address violence against women and trafficking in women within the Member States are representative and important. However, the magnitude of social realities such as violence against women and trafficking in women represents extremely complex issues to be addressed. While considering the steps that have already been taken in these fields as very positive signals of recognizing and addressing the problems at the EU level, civil society actors across Europe, including women's non-governmental organizations, demand more articulated and legally binding instruments to be set up in order to adequately response to the consequences of violence against women in all its forms.[63]

4.4 Women in Decision-Making: An Unresolved Aspect of Gender Equality

There is no legally binding provision on gender equality in relation to decision-making, including political decision-making, at the EU level. However, it is important to note that Directive 2002/73/EC stipulates that "Member States may maintain or adopt measures within the meaning of Article 141(4) of the Treaty with a view to ensuring full equality in practice between men and women."[64] In this regard, at the level of legal interpretation, there is space for concluding that positive actions in relation to gender equality in decision-making are also to be promoted.

In terms of their presence in the political decision-making arena, women are still significantly under-represented both in political structures in the Member States and in EU institutions. This reality represents a fundamental deficit of EU democracy.[65] In relation to promoting the balanced participation of women and men in decision-making, the Commission[66] urges Member States to ensure the implementation of the

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62 Commission Decision 2003/209/EC of 25 March 2003 Setting Up a Consultative Group to Be Known as the 'Expert Group on Trafficking in Human Beings', *Official journal* L 79 of 26.03.2003, pp. 0025–0027, available at http://europa.eu.int/eur-lex/pri/en/oj/dat/2003/l_079/l_07920030326en00250027.pdf.

63 European Women's Lobby, *Beijing+10*, op. cit., pp. 45–47.

64 Directive 2002/73/EC, Article 1(2) (adding Article 2(8) to the amended Directive 76/207/EEC).

65 European Commission, *Report on Equality between Women and Men,* 2004, op. cit. p. 9.

66 Ibid.

Council Recommendation 96/694/EC on the Balanced Participation of Women and Men in the Decision-Making Process,[67] in particular by:

- using "the sets of indicators agreed by the Council of Ministers for the follow up of the Beijing Platform for Action on women and men in political, as well as economic decision-making"; and
- increasing "women's participation not only in the representative bodies, but also around the negotiation table."

The Council Recommendation 96/694/EC was followed in March 2000 by an evaluation Report issued by the Commission.[68] The Report notes that the impact of the 1996 Council Recommendation has to be assessed in connection with the Beijing Platform for Action. "Both had an impact on Member States policies but failed to achieve the result of a gender balance in decision-making."[69] Furthermore, the Report highlights that "The question is no longer as to why women should be in decision-making positions, but how to achieve this goal."

The March 2000 Commission Report on evaluating the impact of the 1996 Council Recommendation was followed by a Report issued by the Committee on Women's Rights and Equal Opportunities of the European Parliament in December 2000. This European Parliament Report has a special significance as it brings a new view on the topic by integrating a chapter dedicated to the advantages of women's participation in decision-making, as they were elaborated by the European Network "Women in Decision-Making."[70] These advantages include the aspects of democracy reinforcement, rejuvenation of political culture, and enrichment of political culture with different interests and value systems.

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[67] Council Recommendation 96/694/EC of 2 December 1996 on the Balanced Participation of Women and Men in the Decision-Making Process, *Official Journal* L 319 of 10.12.1996, pp. 0011–0015, available at http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=en&numdoc=31996H0694.

[68] European Commission, *Report on the Implementation of Council Recommendation 96/694 of 2 December 1996 on the Balanced Participation of Women and Men in the Decision-Making Process* (Brussels: European Commission, March 7, 2000), available as COM(2000)120/final at http://europa.eu.int/eur-lex/en/com/rpt/2000/ com2000_0120en01.pdf.

[69] Ibid., p. 21.

[70] European Parliament, *Report on the Commission Report on the Implementation of Council Recommendation 96/694 of 2 December 1996 on the Balanced Participation of Women and Men in the Decision-Making Process* (Strasbourg: EP Committee on Women's Rights and Equal Opportunities, December 4, 2000), p. 16, available as A5-0373/2000 at http://www2.europarl.eu.int/omk/OM-Europarl?prog=report&l=en&pubref=-//ep//nonsgml+report+a5-2000-0373+0+doc+pdf+v0//en&level=2.

As equality for women and men is essential to democracy and represents a fundamental principle of Community law, and as long as the balanced participation of women and men in the decision-making process is a key element in achieving real equality between women and men, European women's non-governmental organizations call on the European Union to take into consideration proposals for a Directive to cover new gender equality areas, such as gender equality in decision-making. Reforms within the electoral rules in the Member States should also be carried out in parallel, as well as the introduction of parity democracy and the principle of alternation on the electoral lists for future European elections.[71]

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[71] European Women's Lobby, *Beijing+10*, op. cit., pp. 63–64.

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