

Session 1: Social Partners Influencing Gender Equality Policy in the EU and Nationally

The EU Gender Equality Policy and Social Partners: Disappearing Partnership?
Sophie Jacquot (USL-B, IEE, CReSPo)

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Introduction

As Anna Elomäki and Johanna Kantola have expressed it recently in an article which is one of the few to directly tackle the question of the relationship between social partners and gender equality policy-making at the EU level: “gender and EU scholars have paid virtually no attention to social partners” (2020, to be published). This virtual image is of course a little fuzzy since social partners have been considered in the literature on the EU gender equality policy and its transformations (see for example Hoskyns, 1996; van der Vleuten, 2007; Jacquot, 2015). However, they have undoubtedly been included in this literature as actors among others – and even as actors more marginal than others – and they have never been considered as the focal point of the analysis.

On the side of social policy and industrial relations specialists, gender analysis has been paramount and transformative for several decades now. In this endeavour, if we concentrate at the European level, Jill Rubery and the works of the European Commission’s expert group on gender, social inclusion and employment throughout the 1990s and 2000s have largely contributed to the legitimacy and visibility of analysing labour market reforms from a gender perspective, comparatively and also considering the importance of the European level. Many works have also studied the role and place of women within employers and employees’ organisations at the national and international level, however the European level has been much less scrutinized besides the important work by Cynthia Cockburn which dates back from the 1990s, and two studies from Eurofound (Weber et al. 2014) and the ILO (Weiler, 2013) on social partners and social dialogue and gender equality in the EU. If we consider two of the main EU social partners’ organisations, we realize that women’s structures remain quite understudied in contrast with similar structures at the national level. We can infer for example that the ETUC Women’s Committee has been born in 1975, but we don’t know how or thanks to whom¹, and the literature remains silent when it comes to the UNICE/Business Europe Equal Opportunities Working Group and its origins. This underlines two main features of the scholarship on gender equality and the social partners: it hasn’t received much attention and most of its attention has been dedicated to trade union organisations.

¹ Cockburn (1997) and Pillinger (2010) as well as the ETUC website mention a creation in 1975, while Degryse, in his retrospective book on 40 years of history of the confederation explains that during the ETUC’s London Congress in 1976 the work of several committees and working groups is presented, including that of the group called “women trade unionist leaders”, “which will become the women’s committee”, with no specific mention of a date (Degryse, 2013, p. 31).

Analysts of EU social policy and EU corporatist governance do take gender into account, especially since legislation on equal treatment and equal opportunities at work is one of the main landmark achievements of Social Europe since the mid-1970s, but the specific role of the European social partners in the framework of the EU gender equality policy or with regard to this policy is scarcely considered as such.

In total, when having a closer look at the interactions between labour market organisations and EU gender equality policy many gaps remained. An illustration of this can be found in one of the central analytical concepts of gender and EU scholarship, that is Alison Woodward's "velvet triangle": "Designed as a metaphor to help understand the importance of informal ties in European transnational gender equality policy making. It identified the special networks of actors (politicians, femocrats, women's movement/academics, and consultants) from both within and outside the state that interacted in a multi-layered formation" (Woodward, 2015, p. 9-10) and as such it contributed to characterize a specific type of governance, unique to EU gender equality policy-making, constituting both its strength and weakness. What is interesting here is that even if we know that social partners have played a part in the trajectory of the EU gender equality policy, they tend to be considered as marginal or side-actors, not important enough to be considered as being part of the velvet triangle. However, this leaving aside is not explained or analysed, they just appear less important than other actors – which could be considered as counter-intuitive for a policy which has emerged and flourished for more than 30 years as a social policy in a political system which acknowledges the special role of the social partners in this framework (art. 152 TFEU).

In this context, Anna Elomäki and Johanna Kantola's research appears as an important renewal, aiming at furthering the analysis of the role social partners take in the advancing (or potential setting back) of gender equality in the EU context.

Following their trail, this paper aims at putting some light on what largely remains a blank spot within the literature on EU public action aimed at combating gender inequalities. More precisely, its objective is to adopt a long-term longitudinal perspective in order to trace the part played by these social actors in the process of emergence, institutionalisation and evolution of the EU gender equality policy.

In this paper, we will put the spotlight on the labour market organisations. Analysing their role and the evolution of their role within the changing governance of the EU gender equality policy, we will also ask if the social partners should be 'reintegrated' into the velvet triangle alongside the women's movements, the academics and the consultants and if they should be granted (or not) a more important part than that which has been given to them until now.

1. The emergence and institutionalisation of the EU gender equality policy: a difficult relationship (1970s-1980s)

1.1. When everything, once again, starts in Herstal

It is generally assumed that the EU gender equality policy is not exactly born in Brussels in the mid-1970s but rather a decade earlier, in the first months of 1966, in the small Belgian city of Herstal with a strike of the "machine-women" of the national factory of arms (FN) which was located there. It is usually considered as important and symbolic because, first, it is the first time that a social movement issues direct claims invoking the national implementation of some legal disposition of the treaty of Rome, more precisely of its article 119 on equal pay. As can be seen from the photographs of the demonstrations of the time, the women workers' slogan was "equal pay for equal work". Second, the Herstal strike is also important since it acted as a

catalyst for Eliane Vogel-Polsky. More precisely, she acted herself as a catalyst or an inspiration for the claims and demands of the women on strike, and the strike was a catalyst or an inspirational moment herself in order to fight with her own arms, i.e. legal action, for the national implementation of article 119.



1966, © Desarcy-Robyns (musée de la vie wallonne)



1966, © CARHOP

What is important with regard to the question of the interaction between the social partners and EU gender equality here, is that the Herstal strike and the mechanisms and relationships that developed around it are typical of the relationships that will develop between social partners actors and gender equality actors in Brussels both within and outside the European institutions. And these specific relationships are in fact quite coherent with the functioning of the “velvet triangle” – even before it started to exist concretely.

The first specificity that will be found again later at the EU level and around the Schuman roundabout, is that we know that there has been an exchange relationship between women from different arenas – here between women academics and women trade unionists. As mentioned before, indeed, Eliane Vogel-Polsky has contributed to the ignition of the strike. In September 1965 she participated to a seminar organised by the Belgian trade union FGTB, and she presented article 119 and her conviction that it could be a tool and an open door towards the material application of equal pay on the labour market. Charlotte Hauglustaine, a FN union representative, attended the seminar and went back to Herstal with the idea that equal pay was possible to reach (within the FN, women, even when they were qualified, were systematically paid less than the least qualified man). She became one of the leaders of the strike and instrumental in expressing the demand for “equal pay for equal work” (Gubin, 2007, p 63-98; Hubert 2018). In a second moment, after the beginning of the strike during Spring 1966, this alliance of the different spheres continued and a support committee for the strike was created by women activists, academics and politicians (Equal pay for equal work committee). Another example of this exchange relationship concerns the aftermath of the strike. Eliane Vogel-Polsky is disappointed by the results of the strike but all the more convinced that strategic litigation can be fruitful. However, in order to move forward with this conviction, she needs cases to test article 119 and try to obtain a ruling declaring its direct effect on national legislation. Her first try and her first test case will be brought to her by Christiane Labarre a FGTB union representative from Charleroi. It will be the *Mertens* case, a case of unemployment benefit discrimination, which will end up being a judicial semi-success (the case is won but it does not go up to the European Court of Justice) and a political disappointment (the socialist government ended up changing the attribution rules for the unemployment benefit which used to be a fixed amount based on discriminatory criteria such as sex, age or family responsibilities; instead the level of the benefit started to be proportional to the level of pay of each worker: it was not discriminatory anymore but it became unfavourable for women who were paid less than men) (Vogel-Polsky, 2003; Gubin, 2007).

However, it is thanks to these “velvet networks” that she has been able to first try testing article 119, which paved the way for the *Defrenne* cases², which will in its turn paved the way for the first 1970s pieces of European legislation on equal pay and equal treatment.

The second specificity is that this exchange relationship did not develop at the institutional level but informally and on an individual basis. It is not by chance that the previous paragraphs mention individual names rather than organisation names, because the moment of the Herstal strike and more largely of the events that will end up in the *Defrenne* cases and the fight for equal pay in Belgium at the time, very much representative of what was happening in the other countries of the EEC then, has been a battle fought not only without the trade unions (and the employers’ organisations) but also against the trade unions. When we see on the following photograph Charlotte Hauglustaine speaking in front of this all-men podium, it is not a coincidence that they all feel embarrassed and ill-at-ease, it is mostly because this movement of women and the voices of these women made them ill-at-ease.

² In the second *Defrenne* judgement in 1976, the ECJ acknowledged the direct effect of article 119.



1966, © Coll. Fonds Robyns-Desarcy, FAR

The Herstal strike has indeed been an illegal strike for more than one month since the trade unions, including Charlotte Hauglustaine's own union, weren't acknowledging the strike and, contrary to the tradition, they did not offer women workers any financial compensation, or strike pay (Coenen, 1991). And indeed, the "machine women" were protesting against collective agreements which had been signed by the unions, and against rules and training programmes (men-only programmes) which were jointly managed by the trade unions. The women trade unionists who joined the "Equal pay for equal work committee" to support the strike, like Emilienne Brunfaut, did it in their own name and not on their capacity as union representatives, since the major trade unions, as well as some political and feminist organisations considered that the committee was too "bourgeois' and pluralist" (Gubin, 2007, p. 79).

The same logic prevailed with regard to the test cases Eliane Vogel-Polsky was looking for in order to build her judicial strategy. Here again, Christine Labarre acted on her own to guide her towards the *Mertens* case:

"I was saying to them: 'I will plead for free, just give me cases!' No one [in the trade unions] wanted to give me equal pay cases" (interview with Eliane Vogel-Polsky, quoted in Gubin, 2007, p. 87).

The *Defrenne* case arrived through her lawyer colleague Marie-Thérèse Cuvelliez, which had been contacted by an organisation called the Flying Air Hostess Corporation, which had been created because the mixed Sabena trade union for flying attendants had never defended the specific interests of the women air hostesses. However, this organisation had never managed to obtain the status of a representative trade union and had no right to participate in collective negotiations, only as observers (Vogel-Polsky, 2003, p. 144-145). The trade unions did not want to support the plaintiffs, nor to denunciate cases of sex-based discrimination, since this discrimination was included in the collective agreements they had negotiated and signed, and for which they bore responsibility.

1.2. Difficult times, individual alliances

As explained before, what we have just seen with the Herstal strike and the strategic litigation journey of Eliane Vogel-Polsky is absolutely representative of the role played by social partners actors during the years of emergence and the first decade of existence of the gender equality policy at the European level: the employers' organisations are mostly absent, and the trade union (including sometimes trade union women) are reluctant or even hostile to a policy which is considered as mainly beneficial for white-collar and professional women and as detrimental to class-based solidarity against gender-based solidarity (on this point see Hoskyns, 1996). In this context, however, mutual support will develop between the first femocrats from the

European Commission and some women union representatives on an individual and informal basis (Cichowski, 2007), participating to the specific type of governance that will characterize this policy field for some decades: a “velvet triangle/figure”-type governance which did included preeminent women trade unionists such as Emilienne Brunfaut from Belgium or Maria Weber from Germany.

In fact, the existence of these informal networks based on social and interpersonal ties was the result of the similar situation lived by women in masculine structures of power in the 1970s and 1980s, may it be within the European institutions or within labour market organisations.

On the labour market side, as Cynthia Cockburn puts it, “the trade union movement has demonstrably not been a shaker-and-mover in the development of the Commission’s equality initiatives. It has sometimes impeded special measures designed to help all women, on the grounds that they might favour middle-class women [and there] has always been a women’s movement within the trade unions, but its external influence has continually been limited by the struggle it has had to wage for survival and influence within those very masculine bodies” (1997, p. 469). Building on Joni Lovenduski’s work (1986), she explains that European corporatism and the European system of interest representation, at least up until the beginning of the 1990s, has not been beneficial for women who had mainly to gather their efforts in order to obtain representation, at the expense of being able to impose a gender perspective within the treatment of labour market issues: “mainly men pursuing a male agenda” (Cockburn, 1997, p. 461). Moreover, labour market organisations, including the trade unions, were not in favour of questioning regulations on equal pay and equal treatment at work since, as social partners in countries with corporatist arrangements, they shared the responsibility for the actual structuration of wages and of workplace practices. Consequently, as mentioned before, women from these organisations who participated to gender equality policy initiatives at the European level did it mainly on their own capacity, according to their specific experience and expertise, at specific moments and on an ad hoc and fluid basis, rather than in an organised fashion.

On the European Commission side, the story is well known of Jacqueline Nonon and Fausta Deshormes La Vallé, the first two femocrats who managed to gather and use as strategic resources the policy instruments at their disposal in order to place gender equality issues on the European agenda, to establish the fight against gender discrimination as a legitimate policy and then to institutionalise this policy by creating specific structures in charge of implementing and developing gender equality initiatives and measures, including legislation. To this end, they used expertise (first with the Sullerot report on women and employment in the European Community in 1970, afterwards this will continue with all the groups of experts that will be set up during the 1980s); they commissioned some of the first Eurobarometer surveys in order to build a public opinion on “women’s emancipation issues”; they relied on the international context (with the 1975 United Nations Conference in Mexico City and the launch of the “Women’s Decade”). And, in a classical functionalist move, they built ties and gathered support from outside the European institutions and from organised interest so as to give weight to their objectives. Women from labour market organisations have systematically been part of this loose policy community. Emilienne Brunfaut was part of the Article 119 group in the 1960s, Maria Weber was in charge of the opinion from the Economic and Social Committee on the proposal for the 1975 directive on equal pay. When a conference is organised in March 1976 in order to present the results of the first *Women and Men in Europe* Eurobarometer survey to key women from all arenas of societies, women from employees and employer’s organisations are present and are instrumental in demanding the institutionalisation of the issue (demands that will lead to the creation of the “Bureau for Women’s Employment Issues” in DG Employment and of the Unit “Information to Women’s Organisations and the Press” in DG Communication). When the Advisory Committee on Equal Opportunities for Women and Men is official established by the European Commission in 1981, the Decision states that the “representatives of the two sides

of industry at Community level may attend meetings of the Committee as observers”³. As such, the social partners are given a seat at the table of one of the most important institution of the gender equality policy at that time, one which, before its statutes were amended and its composition modified in 1995, benefited from an exceptional degree of independence within the world of European comitology, with a voice both respected and listened to.

The question of the organisation of women interests is more conflictual. Collaboration within the women’s movement was difficult to put in place because of differences between traditional and feminist organisations, but collaboration between the unions and the women’s movement was also a challenge in itself because of lack of confidence and the feeling that women activists were not aware of the reality of work and of the labour market. [add quote by Jacqueline Nonon??] However, members from the ETUC’s Women’s committee have been invited to the 1982 conference in Bonn which was the first attempt, financially supported by the European Commission, to gather and organise an overarching and integrated movement representing women’s interest at the European level. This attempt will only materialize with the creation of the European Women’s Lobby in 1990, but several EU-level unions, including the ETUC, are members of the EWL since then.

This first period is certainly the one for which the question of the interactions between (specific) labour market organisations actors and the gender equality policy at the EU level is best known, especially thanks to works like that of Catherine Hoskyns (1996) who underline the ambivalences of these interactions: mainly confrontational at the organisational level but sometimes individually supportive. So it seems difficult to altogether exclude social partner actors altogether from the “velvet triangle”.

It is also important to see that the particular type of relationships which was under way at the time between a rather small group of committed women from different arenas promoting both gender equality and European integration was in line with the characteristics of the gender regime of the time at the European level. Indeed, we can consider that the collective absence of trade unions and even their obstruction to the construction and development of the European gender equality policy participated to the relative elitism which characterizes its policy-making as well as its policy community during this period: only some discrimination affecting some women are targeted by European public action, i.e. women who are European citizens and who participate to the labour-market. This elitism is reflected in the composition of the “velvet triangle” which does not include nor really represent grassroots activists. We can call this a vicious circle or a self-fulfilling prophecy as Hoskyns did (1996, p. 204), but by opposing a policy and the autonomous organisation of interest in this field on the grounds that it was too much inclined towards middle-class women, they reinforced this inclination and the scarce linkage between the European level activities and women workers.

2. Being in and out: social partners in the gender equality neo-corporatist governance (1990s-2000s)

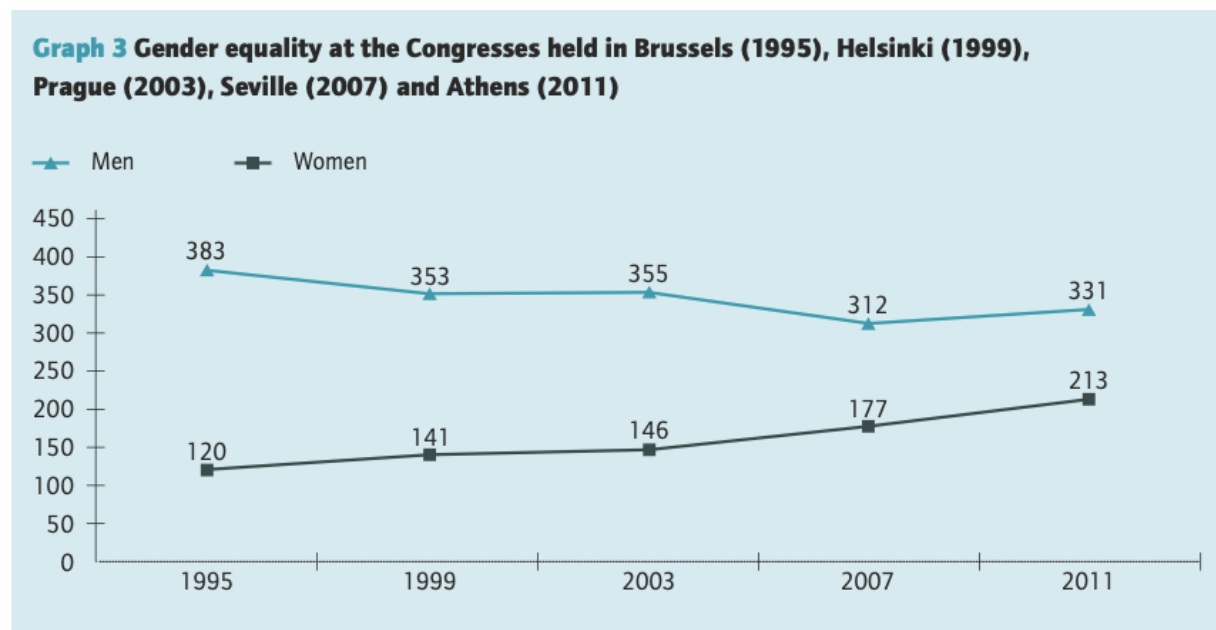
2.1. Structured representation of women and gender equality measures in the European social dialogue

As we have just seen, the role and place of social partners in relation to gender equality policy at the EU level was relatively marginal until the end of the 1980s. The period that begins around the signing of the Maastricht treaty proved to be quite different because of two main changes:

³ 82/43/EEC: Commission Decision of 9 December 1981 relating to the setting up of an Advisory Committee on Equal Opportunities for Women and Men (Official Journal L 020, 28/01/1982 P. 0035 – 0037), article 3.4.

the development of European social dialogue and the increasing number of women involved in this dialogue.

The 1990s were the years of a significant investment by women in the structures of European social dialogue and a certain recognition, at least formal, of this investment and its legitimacy, especially within ETUC (Pillinger, 1991). The beginning of the period was characterised by under-representation. A survey, commissioned by the ETUC in 1994 (Braithwaite and Byrne 1995) surveyed women in decision-making bodies of the ETUC's affiliates, the confederation itself and the sectoral social dialogue and documented the gap between the proportion of female membership (between 25 to 50%) and their presence in leadership position (on average 17% of their executive committees for example). But, even if progress has been slow, there has been progress and it has been accelerating at the end of the period, at least within ETUC as shown by the following graph.



Degryse, 2013, p. 78.

More precisely, the starting signal is certainly to be found in the 1990-1991 internal reform of the ETUC, which gives more formal power to the Women's committee with three representatives to the executive committee and one representative to the direction committee. In 1991, the first two women Confederal Secretary have been appointed. Moreover, the activities of the Women's committee of the ETUC developed in number and influence starting with the 1990s congresses of the confederation (Luxembourg in 1991, Brussels in 1995, Helsinki in 1999). In 2003, the Prague congress decided on a gender equality plan for a better integration of women in union structures which adopts a dual equal opportunities / gender mainstreaming approach. In Seville in 2007, the ETUC adopted a Charter on gender mainstreaming in trade unions and accepts the principle of the 8 of March survey with collects sex-disaggregated data and analyses each year women membership and representation in decision-making positions within the affiliates' structures. During this same congress, the first woman President of the ETUC, Wanja Lundby-Wedin is appointed, while the first woman Secretary General, Bernadette Ségol, is elected in Athens in 2011 (Degryse, 2013).

But of course, structural barriers remained and hampered the participation of women, and marginalisation is not easily nor rapidly overcome. Cockburn (1996) explains that this under-representation of women and of their interest can be explain by intricate systemic factors, more precisely the ghettoising of women's policy, the imposition of hierarchy (with gender equality

concerns at the bottom of this hierarchy), what she calls “control through bureaucratic process” (which constrains campaigns and initiatives in favour of gender equality), as well as men’s resistance (even most of the time passive resistance). Nevertheless, the voice of trade union women’s groups starts to be heard, louder and louder over the years.

The other aspect to consider is that of the increasing importance of the European social dialogue and of the European social partners as new actors of the EU gender equality policy in a context and a period when EU social policy is flourishing and integrating gender issues, at least until the mid-2000s.

First, the period is characterised by the reinforcement of the institutionalisation of the European Social Dialogue with the Maastricht treaty and its Protocol on Social Policy which induced mandatory consultation of the social partners on legislation in the area of social affairs, but also gave them a possibility to negotiate framework agreements at Community level (Crespy, 2019; Pochet, 2019). This delegation of the legislative competence has been fruitful during this second period in the field of gender equality. Two directives have directly resulted from these provisions: on parental leave in 1996 and on part-time work in 1997⁴. The negotiations on these two texts had stalled for some time in the Council and the Protocol on Social Policy opened up the door for them to be proposed by the Commission to the European social partners for collective negotiations. It is the resulting framework agreements between them that have been transposed into directives. Consequently, the fact that European social partners have been involved in these texts does not stem from a particular interest in gender equality. Instead it has more to do with seizing the opportunity of an issue blocked in the Council and an opportunity for the Commission and the social partners to show the usefulness of the social dialogue at the European level. Gender equality here has been envisaged as a tool to promote collective negotiations rather than an end in itself, and in substance, both directives include only minimal requirements and protection. However, they have contributed to install the social partners as gender equality policy actors.

Second, in terms of soft law and transversal coordination, issues of gender equality have been part of most of the plans for EU multiannual programmes in social policy. Indeed, the integration of concerns linked to gender inequalities is one of the distinctive traits of the European Employment Strategy from 1997, of the social inclusion process, and from 2000 on of the Lisbon Strategy (Rubery, 2005). Here, the dynamic undertaken at the UN Conference on Women in Beijing in 1995, the political changes linked to “pink Europe” of the second half of the 1990s and the will of social actors in the European institutions have created a supportive window of opportunity for gender equality concerns (Jacquot, 2015, 117-120).

Following this wave, the 2005-2009 Framework of Actions for Gender Equality has been a crucial step. This document is a joint policy commitment from the European cross-industry social partners (BusinessEurope, UEAPME, CEEP, ETUC) to tackle together some issues linked to gender inequalities in the labour market and to have some actions implemented by their member organisations at national level⁵. The Framework of Actions is part of the European Social Dialogue and is financed by the European Commission. This initiative was important from the point of view of the interaction between social partners and gender equality policy at the European level because it signalled, first, that gender equality was an issue of common interest and that points of convergence could be found; second, it also underlined the fact that trade unions but also employers’ organisations recognised the fact that they had a role to play in the European policy process on these issues and that they were willing to play it.

⁴ Women being overwhelmingly in majority in this type of contract, it is thus possible to consider that the directive concerns them more particularly.

⁵ The four priorities chosen to these joint initiatives were: addressing gender roles, promoting women in decision-making, supporting work-life balance and tackling the gender pay gap.

2.2. “Equality for the market” as a compatible gender regime

We have just seen that most of the impetus for both developing gender equality in the European social dialogue and adopting measures to increase women’s representation and leadership in labour market organisations at the EU level stems either from the Commission when activities have to do with tripartite governance or from the trade unions. Employers’ organisations are not pro-active, however, the evolution of the EU gender regime from the 1990s on will contribute to have employers on board, especially thanks to a cognitive framing which resonates with their priorities and which will contribute to the integration of the social partners in the ecosystem of the EU gender equality policy:

“There is at least a consensus [among BusinessEurope member organisations] on this question on the fact that it is a good thing that women work and that it is a loss for companies that women do not participate to the labour market”⁶.

In the framework of European construction, moral and social justice arguments have never been neither the most important nor the more legitimate arguments in order to promote gender equality public action. Social Europe, more generally, has always been broadly understood as accompanying the economic integration of the member states of the Community. The market norm has always dominated and has always been the alpha and omega at the EU level. Nevertheless, in this context the equality norm was autonomous, it enjoyed specific legitimacy to exist and to develop as long as it abides to the constraints of the market and remains within its limits. It is what I have called “equality within the market”: actions in favour of gender equality were justified and considered as legitimate to the extent that they did not overcome the boundaries of the functioning of the internal market. Starting from the 1990s, the dual economic and social objectives⁷ of the EU gender equality policy have been subsequently reordered to support macro-economic goals and the norm of equality has been subordinated to the norm of the market: “equality within the market” became “equality for the market” (Jacquot, 2015). Issues such as the conciliation between private and professional life became essential in the quest for increasing employment rates (Jenson, 2008). The “business case” for equality (Dickens, 1994) contributes to a shift in arguments which leads to consider anti-discrimination policies as economically valuable and useful to reach macro-economic objectives (under-exploitation of human resources, waste of investment in education and training, but also at a more micro level reducing labour shortages, improving employees’ commitment or reducing staff turnover) (see Eisenstein, 2009).

In this sense, the transformation of this cognitive framework and the reorientation of the EU gender regime, from “equality within the market” to “equality for the market”, facilitated the involvement of the social partners, and especially employers’ organisations, into gender equality policy-making. It also put the spotlight on specific gender equality issues and contributed to re-orientate the centre of gravity of EU gender equality policy towards measures in line with this cognitive framework like parental leaves or gender stereotypes, while other are overshadowed like sexual harassment or quality of work.

2.3. “Social partners are not just any partner”

As we have just seen, the EU social partners have contributed to some of the main policy outcomes in the field of gender equality during the 1990s until the beginning of the economic crisis at the end of the 2000s. In formal terms, they continue to participate to structures such as the Advisory Committee on Equal Opportunities for Women and Men. Informally, ties with members from DG Employment and the Equal opportunities Unit especially, but also with

⁶ Interview, Business Europe, 04/11/2019 (my translation).

⁷ See the second *Defrenne* ruling which mentions the “dual finality, economic and social” of article 119 of the treaty of Rome.

members of the European Parliament and the FEMM committee develop. In this sense they have become major actors in the galaxy of EU gender equality policy-making. Still, it remains that the relationships with NGOs continue to be difficult, and as such it is certainly not totally accurate to consider that EU-level social partners fully participate to the “velvet triangle”. Indeed, during this period, the agenda of the two types of organisations tend to differ. <develop on the differing agendas, esp. violence vs. working conditions> Both consider that “their” main issues are not central for the others and vice-versa.

Nevertheless, there are moments when these diverging, or parallel, interests meet and actions are developed together, joining the NGOs and the trade unions. One such example can be found during the negotiations of the Amsterdam treaty when a large coalition has been gathered in order to lobby for a revision of the treaty that would include new and stronger provisions in terms of social policy and gender equality. However, and even if the pre-Amsterdam lobbying proved successful since important new provisions have indeed been included in the new version of the treaty, these joint campaigns tend to remain occasional, as expressed by this gender equality specialist who both worked for the EWL and the Women’s committee of ETUC:

“[There has been this alliance for Amsterdam] but we did not learn much and we don’t really work together, even if ETUC is a member of the EWL”⁸.

This difficulty to work together and the cautiousness of the social partners to be fully invested as members of the EU gender equality policy community can be explained if we take into account the collective identity variable. The cognitive dimension of a group or an organisation’s identity is important since it has an impact not only on the way European social partners see their role and their place within the EU political system, but also what type of collaboration they will favour or what issue they will choose to put forward. The importance of collective identity has been underlined by Lisa Vanhala in her work on EU-level anti-discrimination interest groups. She explains that this collective identity “will permeate all aspects of [an] organisation: its membership, its relationships with other actors, its goals and its strategies in achieving those goals. The interpretative frames continuously being constructed and redefined within an organisation may dictate courses of action or tactics that are considered more ‘appropriate’ than others” (Vanhala, 2009, p. 743). In the case of the European social partners, this could be summarised as follows: social partners are not just any partner. This is clearly formulated by persons in charge of gender equality issues within European social partners organisations:

“Trade unions have always considered that they have a special place in the treaty, so why sharing this power with NGOs?”⁹.

“We are not civil society, we are stakeholders in the labour market, it is important to make the difference, we are part of the solution”¹⁰.

This means that even when they start to become organised inside the labour market organisations with specific structures starting from the 1990s, women in these organisations do not consider that they are necessarily “natural allies” of civil society organisations when it comes to advancing and supporting gender equality policy. What we see here is roughly the same kind of cognitive phenomenon that can be observed among gender equality advocates who, at the same period, consider that “women are not a category” (Lépinard and Bereni, 2004) and that sex-based discrimination is not just any discrimination because of the universality of gender differentiation but also because they have a special place in the treaty since 1957. This cognitive framing based on the logic of exception considers that “sex-based discrimination are “exceptional” because it is incomparable (...). Sexual difference takes precedence over all other differences (ethnic, social, etc.) and is thus the only legitimate criteria for distinction. As a

⁸ Interview, ETUC, 11/11/2019 (my translation). (verify quote on the tape)

⁹ Interview, ETUC, 11/11/2019 (my translation).

¹⁰ Interview, Business Europe, 04/11/2019 (my translation).

result, the public action designed to combat the inequalities that women suffer from has a specific legitimacy” (Jacquot, 2015, p. 55). The “we are not just any partner” logic induces a conception of legitimacy, and it also means that some gender equality issues are “more legitimate than others” and should be put on top of the agenda.

This helps to understand why the social partners are both in and out when it comes to gender equality policy during this period. They take part in the governance of the policy, they have influence on the content of the policy, but they do not participate actively, or as actively as other actors, or as much as they institutional position would allow them to, to the gender equality policy community.

3. Troubled times: facing the double bind of the critical transformation of EU gender equality policy and social governance (2010s-)

Since a decade now, the interactions between the EU social partners and gender equality policy, and their role in the advancement (or blocking or stalling) of gender equality concerns have been confronted with a less and less favourable institutional, political, economic and budgetary context, as well as a more and more constrained political space. These troubled times impact the role played by social partners in this policy and the content of their influence as gender equality actors.

3.1. EU gender equality policy is not a social policy anymore? Portfolio transfer and the dislocation of the “velvet triangle”

In February 2010, the second Barroso Commission initiated a new distribution of portfolio which created a position of vice-president of the Commission, responsible for justice, fundamental rights and citizenship. This political and symbolic change was materialised by an administrative transfer, following which the Direction for equality and the fight against discrimination, including the Equal Opportunities Unit, which used to be part of DG Employment, became part of DG Justice. The portfolio for gender equality and anti-discrimination as well as the accompanying services and budget lines thus left their traditional base as well as the heart of EU expertise in the area of gender equality until then. For many actors, and especially members of the “velvet triangle”, the action of the EU against gender inequalities was strongly linked to the social domain and to labour market discrimination:

“There was a difference with the move to DG Justice, that’s for sure. What we do [now], it is more a subject among many others, and well it’s true that questions of equality are not just questions of unemployment, but when we shifted from the employment approach to the human rights approach, it’s not the same thing. There is a problem of defining the perimeter; we are still supposed to be talking about employment after all”¹¹.

This transfer from DG Employment to DG Justice, which is the sign of a new understanding of the place, role and content of EU gender equality policy and of the “dismantling by default” of this policy (Bauer et al., 2012), is of course very important with regard to the relationship with the social partners. Whether from a policy or a relational point of view, the transfer was destabilising, and especially for those working on gender equality issues:

“The transfer to DG Just? ETUC was critical of this move. There was a change of people, it was difficult to make sure they take employment into account”¹².

“We were shocked and very disappointed. There is now a lack of expertise [on employment and labour market issues], of memory. There is no understanding.

¹¹ Interview, European Network on Legal Experts in the field of Gender equality, 26/11/2012 (my translation).

¹² Interview, ETUC, 15/10/2019.

We had built up relationships with DG Employment, we were friends, and all of a sudden, there are young people who do not want to pick up the phone anymore”¹³.

We see here that even if women’s and feminist organisations were rather in favour of what they saw as an extension of the perimeter of European gender equality policy, this extension outside of the social domain, the evolution of the centre of gravity of the policy and its formal distancing from DG Employment was more destabilising for EU social partners. It potentially implied both a loss of consideration for social dimension in gender equality policy and a loss of gender mainstreaming in EU’s social initiatives. In the following years, indeed, the focus was mainly on issues more directly linked to fundamental rights (such as female genital mutilation), and social initiatives had a hard time including a transformative gender perspective (such as the work-life balance directive or the European pillar of social rights, see Collombet and Math, 2019; Plomien 2018). Also, it induced a stretching of the ties that developed during the previous period.

3.2. Obstacles to the European social dialogue and the backlash question

The obstacles that Social Europe in general and the European social dialogue more particularly have had to face since the turn of the 2000s and even more acutely since the 2010s and the aftermath of the 2008 crisis have been analysed in details by specialists of EU social policy (Crespy, 2019; Degryse, 2018; Pochet, 2019; Pochet and Degryse, 2016; Prosser, 2016). According to them, it is even possible to characterise these obstacles and difficulties as a decline of European social dialogue which has first been impeded by the focus on soft law and the open method of coordination and the mirroring falling off of legislative initiatives and activity in the social field since the European Employment Strategy and the Lisbon Strategy. This decline has been accentuated by the Great Recession and austerity politics which have followed, and the Juncker’s “triple A” social Europe has not stopped it. In this context, the path chosen is not a relaunch of social integration but rather a reinforcement of fiscal discipline and a dismantling of social protection and national welfare states. Employers harden their positions and emphasise the need for a deregulation of the labour market for the sake of increasing international competitiveness, especially through the reduction of social norms, wage moderation and the lowering of the taxation of labour. The European Commission itself contributes to this decline by adopting a less and less active role in support of social concertation, and even by opposing its development, obstacles which have recently even been acknowledged by the Tribunal of First Instance (*case T-310/18*). According to Christophe Degryse, more precisely, the recent obstacles to European social dialogue are the following: “The cross-industry level is weakened by confusion about the very purpose of social dialogue and its instruments: a forum for discussion on structural reforms of labour markets (according to employers) or a place for collective bargaining to create social standards improving living and working conditions (according to trade unions and... the treaties). The sectoral level, on the other hand, is the victim of an unexpected change in attitude on the part of the European Commission itself. The Commission is now hindering a dialogue that could lead to binding legal standards, in the name of – or under the pretext of – ‘sharp and effective’ regulation” (Degryse, 2018, p. 65, my translation).

What is important here is the consequences of this situation on European social partners in their role with regard to EU gender equality policy. The first obvious consequence is that gender equality as a policy issue has taken a back seat in the social partners agenda. Symbolically, the Framework for Actions on Gender Equality jointly signed in 2005 after two years of negotiations is not renewed after 2009, only the joint 2012-2014 work programme will include

¹³ Interview, ETUC, 11/11/2019 (my translation).

some elements from the Framework for Actions and it will only give birth in 2015 to a “Toolkit for gender equality in practice” which gathers 100 “good practices” from 25 member states on the four priorities singled out in the 2005 Framework for Actions. More generally, the difficult climate implies distrust and reluctance to work together, by fear that it could downplay past results and achievements, especially on this issue, as expressed by a member of the ETUC’s Women’s Committee:

“Employers are reluctant to invest on gender equality at the European level [...]. Re-opening the negotiations is extremely difficult. The common Framework was ambitious, but now, you are not sure what you can get”¹⁴.

Consequently, the social partners are back to influence through lobbying activities rather than through collective negotiations (Pochet, 2019) and the recent directive on work-life balance is a perfect example of this. Initially, after the failure of the maternity directive in 2015, the idea to work on a legislative text on conciliation between work and private life is part of the Juncker’s Commission European Pillar of Social Rights (EPSR) in 2017. The initiative starts with a public consultation and a two-stage consultation of the European social partners, which is in accordance with Article 154 TFEU. Within this framework, European social partners have the possibility to decide to open negotiations on the issue at stake, and indeed as we have seen in part 2, the previous directives on parental leave were based on the agreements concluded previously by the social partners in 1995 but also in 2009. However, in 2017, no negotiations can be initiated: the ETUC is very much in favour of negotiating and addressing carer’s leave and parental leave, but BusinessEurope refuses any discussion and, above all, any new legislative provision. As soon as the EPSR has been presented, the president of BusinessEurope issued a statement on the work-life balance initiative in which he expresses its total opposition to any measure that would imply social spendings such as parental leave (Pochet, 2019, p. 169). This failure of the negotiation process then leaves the way clear for the Commission to issue a legislative proposal which is presented as exemplifying its desire to relaunch social Europe (Collombet and Math, 2019). Collective negotiations being impossible, social partners have tried to influence the legislative process as any other interest group through “classical lobbying”¹⁵, contradicting their own will to not be “just any partner”, questioning their role as gender equality actors.

Another important consequence of this difficult climate and of the back-sitting of gender equality concerns has to do with the question of the institutional representation of women’s interests. Here again, after some results in the previous period, no substantial change has been achieved in the last decade at cross-industry level. On the employers’ side, only the Working Group on Equal Opportunities (which is a sub-group within the Social Affairs Committee) continues to exist and UEAPME has just issued a compendium on good practices of diversity and non-discrimination (Weiler, 2013, p. 19). On the employees’ side, the ETUC’s Women’s statutory Committee with few human resources and no budget continues to lobby internally for gender equality to be taken into account in the organisation’s positions and campaigns, with more or less success such as with the 2017-2018 “Europe needs a pay rise” campaign in which the question of the gender pay gap was quite marginal.

3.3. Gender equality at the margins

I have shown that the dominant beliefs and representations relating to the place and role of gender equality at the EU level have mirrored the transformations of the gender equality policy since a decade, which in turn have been amplified by the repercussions of the economic and budgetary crisis which has affected all European policies since 2008 (Jacquot, 2015, p. 167-173). The new cognitive framework is enshrined in a form of political minimalism, meaning

¹⁴ Interview, ETUC, 15/10/2019.

¹⁵ Interview, Business Europe, 04/11/2019 (my translation).

that its autonomy and legitimacy, its objectives, have been progressively restricted and reduced. While with the previous European gender regime, “equality for the market”, equality was subsumed in economic considerations and had to pass the business case test to find its legitimacy, now the norm of equality appears as, not only subordinate, but as an entirely secondary priority in the European political system, without any autonomy anymore. “Equality despite the market” means that it can only exist despite the dominant economic norm, by saving some rooms at the margins and by adapting in minimal terms, with reduced ambitions. Minimalism being the only possible option in order to aggregate the widest possible interests in order to reach a decision.

This new “minimal” cognitive framework resonates with the findings of the few works on contemporary relationships between European social partners and gender equality and their framing of gender equality concerns. The Eurofound study on this issue published in 2014 points as one of its key findings the following result: “social partners activities in the area of gender equality often revolve around campaigns and education and are mainly focused on issues such as work-life balance rather than being ‘transformative’ in terms of addressing some of the root causes of gender inequality. While addressing the root causes of gender equality may lie partly outside the remit of social partners organisations, they can certainly have an extremely important role within their remit of responsibility and action” (Weber et al., 2014, p. 2). In line with the idea of the EU gender regime as “equality despite the market”, we see that reconciling work and private life has become the point of minimal (almost exclusive) agreement to which gender equality in employment and at work is reduced and it is addressed with a focus on flexibility and without questioning imbalances in power relations between women and men, both at work and in the family. Anna Elomäki and Johanna Kantola (2020) also found in their analysis of the role of social partners on gender equality policy at the EU level that what characterizes their conception of gender equality and inequality is its “narrowness”. They consider that gender equality is reduced to an issue which is exclusively limited to the perimeter of the labour market and that this understanding is seen through the glasses of macroeconomic benefits only, it is “economized” (Brown, 2015). Besides work-life balance, another example of this “minimal” cognitive framework is that of the gender pay gap which is tackled, mainly by employers, as a question of stereotypes, access to childcare and individual education and training choices, leaving unaddressed structural discrimination or the gendered classification of occupations. As expressed by Anni Weiler in her study for the ILO, “as regards the terminology in policy strategies and policy instruments related to gender equality, it appears that there has been a backlash. Focusing on gender stereotypes and career choices is not sufficient for achieving gender equality” (Weiler, 2013, p. 65).

<add BusinessEurope’s quote from the tape>

Conclusion

This text has hopefully shown the importance and need for increased research on the issue of the role of social partners as gender equality actors at the European level. Many periods and dimensions still need to be explored. One of the dimensions which should attract more attention is certainly the specific role of social partners from sectoral organisations. If, until then, cross-industry organisations have been at the centre of the (modest) attention dedicated to gender and the EU research, sectoral organisations and their role with regard to gender equality virtually remain a blind spot, even though they are both active and innovative on the issue.

In these troubled times, as the European gender equality policy is being dismantled and its “velvet triangle” or policy community is being dislocated, it seems important that the social partners, or maybe more realistically at least the trade unions, consider themselves as full

members of this policy community, as gender equality actors with converging interests with the other European gender equality actors, whatever their statutory position.

The question of the mode of actions may also be reconsidered in light of the difficulties undergone by the institutions of the European social dialogue, even though the recent setback caused by the ruling of the Tribunal casts a shadow on the potential use of strategic litigation, defended by some lawyers within the labour market organisations. This may call for more emphasis on traditional, semi-corporatist modes of action and a renewed partnership with other gender equality actors.

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