
23. Gender equality policy

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Gender equality policy is a precious gem for European Union (EU) studies. One of its many values is that observing this specific policy allows one to have a look at a series of processes that highlights the complexity and sometimes ambiguity of the general mechanisms of European integration. One can pick-and-choose among many different examples to see how much the case of gender equality can be an illuminating illustration for EU scholarship.

In terms of theoretical readings on the functioning of the process of European integration, gender equality policy is a good example of neo-functionalist mechanisms (Cram 1993; Mazey 1995). Looking at this policy allows one to see some of them at play: loyalty transfer towards the supranational level, especially through the support of the European Commission to the formation of the European Women's Lobby, functional spill-over (from equal pay to equal treatment on the labour market to gender equality promotion in all matters in which the EU has a jurisdiction), political spill-over and socialisation (with the development of a large policy community), or integration through law (with the specific role played by the European Court of Justice especially thanks to the textbook example of the *Defrenne* rulings).¹ But, it has been demonstrated that the gender equality policy is also an interesting example of the functioning of a 'modified version of intergovernmentalism' (van der Vleuten 2016: 93). When forming their preferences during the negotiations on European regulations in this field, member states have balanced the economic with the political and ideological costs of adopting and implementing far-reaching measures (van der Vleuten 2007; Liebert 1999).

If we look at another analytical tool, i.e., the concept of Europeanisation, we can see that gender equality policy can also be an illustration in the study of the top-down mechanisms of impact of the EU level on domestic structures and actors (Caporaso and Jupille 2001). It has also given birth to more informal interactions between them, inducing policy changes and various forms of usages of Europe (Graziano et al. 2011). This has been the case in a range of domains, from implementation of equal pay or parental leave schemes, to legitimising the debate on sexual harassment at work, mobilising in favour of the Istanbul Convention,² or contributing to the acceptance of electoral gender quotas in France.

We can think of again other illustrations of its usefulness. One of them has to do with the definition of the nature of the EU political regime. Taking into account gender equality policy in this endeavour helps to characterise it as a 'regulatory State' (Majone 1996), but also to describe its transformations under the influence of soft law instruments and new modes of governance (Beveridge and Velluti 2008), such as gender mainstreaming.

¹ These three rulings, and especially the second one in 1976, acknowledged the direct effect of the principle equal pay between women and men workers and as such opened the European legal system to private actors and citizens in this field (see Caporaso and Stone Sweet 1998; Cichowski 2007).

² Council of Europe Convention on preventing and combating violence against women and domestic violence.

Focusing on the institutional side of this policy can be a way of grasping the intricacy but also the power play of the multi-level system of governance of the EU as well as the role of its multiplicity of actors: when studying the EU gender equality policy, you have to consider the respective role of dedicated structures within the Commission, as well as European Parliament's committees, EU Council's formations, expert groups, agencies, Courts, NGOs, domestic bureaucracies, etc.

Such examples are numerous. But, beyond the diversity of the general mechanisms that the EU gender equality policy exemplifies, it is also a precious object of analysis *per se*. Considering that the EU has for a long time been considered as an innovative, dynamic political system when it comes to the promotion of gender equality, analysing the EU gender equality policy allows to examine the mechanisms at play in the emergence and development of a policy aimed at fighting gender inequalities. More recently, in a constrained environment, it also allows to investigate mechanisms of policy dismantling as well as the extent of populist and illiberal attacks against 'gender ideology'.

This extraordinary fertile analytical ground has given birth to a full-fledged field of study on gender and the EU (Abels et al. 2021), and this chapter will try to reflect this richness. In this view, we will first examine the concept of gender equality regime which allows to grasp the specific nature of EU gender equality policy, especially in contrast with national policies. We will then present the content of the EU gender equality policy, its different instruments, institutions, and actors, and their recent evolution. Finally, having in mind the present state of the policy, we will review its main contemporary challenges – austerity politics, illiberal attacks and institutional blockages – and explore its way forward in front of these difficulties.

THE POLITICAL ECONOMY OF THE EU GENDER EQUALITY REGIME

In 1957, the newly signed Treaty of Rome includes an article 119 (now art. 157 of the Treaty on the Functioning of the EU – TFEU) which guarantees 'the principle of equal pay for equal work between men and women workers'. With this article, the primary aim of the negotiators is to harmonise national social systems in order to avoid distortions in competition among the member states within the context of the gradual elimination of customs and trade barriers. It is not a matter of asserting the principle of gender equality as such or even of promoting social justice. The objective is rather to avoid any risk of social dumping. In sectors that rely heavily on female labour, such as textile industry (Hoskyns 1996). It is on the basis of this tiny building block that progressively emerged a full-fledged gender equality policy. Even more so, it is important to understand that it is not 'only' a public policy that has been developed but a specific EU gender equality regime.

The Concept of Gender Equality Regime

In a recent text, von Wahl explains the origins of the concept. She defines it as follows: 'EU policies have grown over nearly seven decades from a few isolated policies only addressing women's equal pay to a complex web of egalitarian norms, rights, and court rulings, supported by institutions and interconnected opportunity structures also described as "regime"' (von Wahl 2021: 17; at the EU level, foundational works on the subject include Liebert 2003;

Ostner and Lewis 1995; Walby 2004). The characteristic of a gender equality regime is that the different elements of this complex web work together as a system and produce an approach to conceiving gender relations and achieving gender equality that is specific to the EU, independently from its member states. Moreover, important in gender equality regimes are the mechanisms which structure the relations between men and women in a given society, their places and respective positions of power. As such, gender equality regimes are situated at the interface between ideas and public policy: conceptions of gendered social roles have concrete effects on the policies that are implemented.

What is the Specificity of the EU Gender Equality Regime?

The specific nature of the EU gender equality regime is to exist within a political system founded on market economy and economic liberalism, with the initial objective of developing the free circulation of capital, goods, services and workers. As exemplified with article 119, it is closely connected to market-building processes. As such, this regime is sometimes considered as inherently paradoxical: how could the fight against gender inequalities be part of a neoliberal project that participates in increasing gender inequalities? How could such a political system promote gender equality at all? It is in fact this relationship to the market that constitutes the very nature of the EU gender equality regime. In order to grasp this specificity, rather than reasoning in terms of contradiction and opposition between the norm of the market and the norm of gender equality, it is more fruitful to understand that they are articulated. The EU gender regime associates both norms more than it opposes them, bringing them together in a syncretism where economic liberalism meets gender equality promotion to produce a particular regulatory regime. This regime is characterised by an original combination where, on the one hand, gender equality promotion can be used for macroeconomic objectives, and where, on the other hand, instruments encroaching on the market can be developed to fight against gender inequalities. In short, the EU gender equality regime is certainly characterised by its market orientation. But, in this context, it is the articulation between the norms of gender equality and of the market and their relative equilibrium over time that is interesting to question.

How has the EU Gender Equality Regime Evolved?

Schematically, we can say that there have been three successive configurations of the relationship between the market and the gender equality norms at the EU level: ‘equality *within* the market’, ‘equality *for* the market’, and ‘equality *despite* the market’ (Jacquot 2015). In the first configuration, up until the beginning of the 1990s, gender equality has to be compatible with the market, it is constrained by its principles and limited by its rules. However, as long as gender equality policy does not overcome the boundaries of the organisation and functioning of the internal market, it can benefit from a certain legitimacy to develop autonomously (‘*within* the market’). This explains that the principle of equal pay of article 119 has been extended to encompass equal treatment at work and on the labour market more generally, and then completed by equal opportunities during the period.³

³ Following the logic of ‘equality within the market’, positive actions are considered legal to the extent that they remain directed at individuals (i.e., men and women as economic agents) and not at groups (i.e., women as members of a structurally disadvantaged group).

This equilibrium started to change in the mid-1990s: the gender equality norm becomes subordinated to the market norm. Gender equality is no longer an objective in its own right but rather an instrument for other public policy priorities, especially growth and economic competitiveness. Gender equality has to produce results '*for the market*' in order to be legitimate. Measures aimed at improving the 'work-life balance' (parental leave, childcare, working time organisation) which develop during this period illustrate this shift (Jenson 2008; Lewis 2006): the main objective is not to fight gender inequalities but rather to increase the employment rate (of women), regardless of the quality of jobs. Employability, fighting against the under-exploitation of human resources are the keywords. Sharing responsibilities in the domestic sphere, changing male behaviour or transforming the distribution of gender roles are not legitimate concerns anymore.

Starting from the Great Recession in 2008–2009, the EU's policy agenda has been reorganised and the configuration of '*equality for the market*' has been accentuated again: even when subordinated to economic objectives, initiatives in favour of promoting gender equality have had a hard time finding legitimacy and political support to be pursued. Gender equality has become an objective which is not only subordinate but genuinely secondary. In this configuration, gender equality can only exist '*despite the market*', with minimal ambitions and restricting its focus to issues that can aggregate the widest possible interests. This minimalist conception is exemplified by the most recent flagship initiative in this domain. In December 2022, the European Parliament and the Council reached a political agreement on a new directive on pay transparency to strengthen the principle of equal pay. Constrained by a shrinkage of political and budgetary opportunities, this proposal typically addresses the issue of equal pay through the restrictive and minimal lens of pay transparency, which has become the single issue to which gender equality in employment and occupation is reduced. Issues such as the quality of employment (including part-time work), working conditions, or the structural discrimination of the gendered classification of occupations are left unaddressed within the new gender equality regime.

INSTRUMENTS, INSTITUTIONS, AND ACTORS OF THE EU GENDER EQUALITY POLICY

EU gender equality policy is constituted by a series of instruments. It also includes different institutional structures as well as networks of actors. All these components have been progressively established. On the eve of the 21st century, the EU was considered as 'one of the most progressive political systems in the world regarding the promotion of gender equality' (Hafner-Burton and Pollack 2000: 452). However, in the following years, under the combined influence of the 2004 enlargement and the higher political fragmentation it entailed, of budgetary restrictions especially after 2008, of transformation of the interinstitutional balance of power and of administrative reforms, the EU gender equality policy has started to undergo a process of policy dismantling, casting a shadow on its future development. This part focuses on this policy trajectory, from expansion to dismantling.

The Diversity of Policy Instruments in the Field of Gender Equality

There has been a gradual diversification of the instruments used in order to implement the EU gender equality policy. They include primary law, secondary law, case law, soft law, but also budgetary and transversal/coordination instruments. This diversification of the instruments has allowed the extension of the field of action of the EU: from the limited issue of equal pay in 1957 to all matters under the jurisdiction of the EU since the entry into force of the Lisbon Treaty in 2009. We are going to examine these different categories.

When it comes to primary law, each treaty has increased the competencies of the EU in the promotion of gender equality. Recently, both the Charter of Fundamental Rights of the EU and the Lisbon Treaty have been important milestones: they notably reinforced the status of the gender equality principle as a common value of the EU and recognised the right to gender equality in all areas (Burri 2018).

Treaty articles are important as they offer a basis for the adoption of secondary law, and today gender equality legislation constitutes a solid and diversified corpus. In 2022, ten directives are in force and at least two more will be definitively adopted in 2023, covering equal treatment and equal opportunities in matters of employment and occupation, equal treatment in the access to and the supply of goods and services or measures against trafficking in human beings. Important to consider nevertheless is the dynamics of legislative developments since over a decade, which have encountered many obstacles. The revision of existing directives included only minimal requirements.⁴ Some proposals remained blocked in the Council for a long time⁵ or abandoned because of absence of compromise.⁶ The adopted proposals have either known very conflictual negotiations⁷ or resulted in side-lining of gender equality questions.⁸

The Court of Justice of the EU (CJEU) has played a crucial role ‘in ensuring that individuals can effectively invoke and enforce their right to gender equality’ (Burri 2018: 8). Recent studies have shown that gender equality case law constitutes around two thirds of EU equality law (Kilpatrick and Miller 2020, for the period covering 1971–2018). The CJEU has notably established and defined the concepts of direct and indirect discrimination, positive action or sexual harassment. Its rulings have regularly provided an interpretation of the law that went beyond the intentions of the governments, both in terms of meaning and consequences. However, the CJEU as such ‘is not specifically gender aware even though the case law demonstrates some small victories in the course of its development’, it has sometime even worked against gender equality (Guth and Elfving 2018: 2), and case law remains an uncertain instrument.

Starting from the mid-1980s, hard law has been complemented by non-binding legal instruments, which are also part of the *acquis*. Initially, these soft law instruments (resolutions, recommendations, communications) mainly remained restricted to the sphere of employment and were aimed at monitoring legislation. From the 1990s, there has been an increase in their

⁴ Directives on parental leave and on equal treatment of self-employed and assisting spouses in 2010.

⁵ Proposal on gender balance on boards and proposal on horizontal discrimination.

⁶ Revision of the directive on the protection of maternity.

⁷ 2019 directive on work-life balance for carers or parents.

⁸ 2011 and 2012 directives on human trafficking and the protection of the victims of crime.

number and a diversification of their content. More recently, as for hard law, soft law instruments have a hard time finding consensus to be adopted.

EU gender equality policy is not merely a regulatory policy. Distributive instruments have developed, accompanying the extension of the *acquis*. From the 1980s on, multiannual 'Action programmes' have been proposed and used by the European Commission in order to create new rooms of manoeuvre for itself, to extend the range of its actions and to ground its image as an active institution in the field (Ahrens 2019). Recently however, these programming documents, such as the Gender Equality Strategy 2020–2025, are no longer attached to a specific budget line and therefore tend to remain primarily declaratory. Funding programmes, more generally, have been impacted by cuts, and since the 2007–2013 financial framework, the amount of the budget allocated to gender equality as a proportion of the overall EU budget has regularly decreased.

Finally, starting from the mid-1990s, a new category of policy instruments has flourished. They include the incorporation of concerns linked to gender inequalities into the EU multiannual programmes in the field of social policy (European Employment Strategy from 1997, Lisbon Strategy from 2000), as well as the development and implementation of gender mainstreaming. These new transversal instruments contribute to the reinforcement of the non-binding measures of the EU gender equality policy, as well as to the extension of its boundaries to new domains. Recently, this type of instruments has experienced a setback. First, there has been a near-total evaporation of gender inequalities concerns in the major multiannual actions plan of the EU. In the Europe 2020 Strategy, the European Semester and the European Pillar of Social Rights, these concerns are in significant decline, with only a few mentions of the specific discriminations faced by women on the labour market and no accompanying objectives or indicators (Kantola and Elomäki 2020; O'Dwyer 2018). Second, the impact of gender mainstreaming on the nature and degrees of gender inequalities has been extremely limited (Guerrina 2020). Even more, recent analyses have shown that resistances to the deconstruction of gender norms and the transformation of power structures at the root of gender mainstreaming have started to emerge, even in policy domains which used to be considered as receptive, such as scientific research (Cavaghan, 2017; Vida, 2020).

The EU Gender Equality Policy Community: Institutional Structures and Networking

The EU gender equality policy aggregates different types of policy instruments, which accumulated over time. They form its material basis. However, it is not enough to focus on this accumulation of instruments to capture the content and functioning of this policy. It is important to examine also its environment, the institutions and actors which have gradually organised to constitute a structured policy community, starting from the 1970s up to the 2000s. We will also see that, over the last decades, the EU gender equality policy community has been destabilised by a number of changes and administrative reforms, mainly aimed at fitting to the standards of EU 'good governance'. As a consequence, the cause-based coalition traditionally supporting the EU gender equality policy has been eroded and the interconnectedness of the key actors, whether public (femocrats, MEPs) or private (activists, academics, experts), has loosened, contributing to the process of dismantling of the policy.

The first embryo of structure of the EU gender equality policy is the creation at the beginning of the 1970s of a working group on women's employment gathering representatives from the member states. On this basis, the Advisory Committee on Equal Opportunities for

Women and Men was established. It inaugurated a singular form of functioning, combining formal structures and informal socialisation, engagement for gender equality and for European integration. Within the European Commission, the institutionalisation of the gender equality policy began to take shape after the adoption of the first directives on equal pay and equal treatment: The Bureau for Problems Concerning Women's Employment in the DG in charge for employment and social policy, and the Women's Information Service in DG Information⁹ have been created in 1976. A major change happened in 2011 with the transfer of the structure in charge of gender equality from DG Employment and Social Affairs to DG Justice. This administrative restructuring signalled the fact that gender equality is (only) one ground of discrimination among other fundamental rights. It also implied a loosening of the ties between gender equality and social policy in times of economic crisis. This situation evolved with the von der Leyen Commission in 2019 and the introduction of an Equality Commissioner. This new portfolio is responsible for all matters linked to inclusion and equality, however it is only supported by a Task Force of experts and does not have its own administrative services which remain part of their respective DGs.

Besides the femocrats from the European Commission, another important group of actors of the gender equality policy community are the academics and experts. From the 1980s, the Women's Bureau developed thematic networks, in order to support and legitimate its initiatives. The members of these groups were chosen for their specific expertise but also for their engagement with the cause of gender equality. Since the mid-2000s, the number of expert groups has been drastically reduced. In line with the new approach to the role of scientific knowledge promoted in European governance, expertise is mainly outsourced, but this outsourcing is not seen and used as a possibility of creating partnerships, rather as mere service provision, diminishing their driving force in support of the policy (Jacquot 2020). This evolution goes hand in hand with the creation of the European Institute for Gender Equality (EIGE), inaugurated in 2010. Even though it was initially conceived as a tool aimed at producing gender expertise and liaising with a variety of gender equality actors, in practice EIGE tends to produce technical knowledge rather than alternatives or a political vision (Jacquot and Krizsán 2021).

In the European Parliament (EP), an Ad Hoc Committee on Women's Rights was created as early as 1979. The 'FEMM Committee' became permanent in 1984 and has been a relentless support of the policy since then. Gender research has demonstrated the important role of the EP in the agenda-setting of gender issues at the EU level and its efforts to mainstream gender and the gendered impact of policies. In a recent review, Ahrens and Rolandsen Agustín underline that it 'has been decisive in expanding the policy scope of the EU from gender equality related exclusively to the labour market to other areas' (2021: 115). These efforts are of course more (domestic violence, gender budgeting) or less (foreign affairs) successful.

When it comes to civil society organisations (CSOs), small groups aiming at defending women's interests at the European level have accompanied the development of the gender equality policy in the 1980s, but the main umbrella organisation, the European Women's Lobby (EWL), was 'only' created in 1990. Recently, there have been important transformations within the system of interests' representation in the field of gender equality. First, the development of a broad fundamental rights policy has led to a thematic competition, doubled

⁹ This structure disappeared at the beginning of the 1990s.

with a financial competition for funding and subsidies intensified in period of budgetary crisis. Within this environment, the influence of feminist mobilisation remains limited (Cullen 2014), and the EWL has to manage the tension between providing efficient technical expertise to policymakers and acting as a critical voice advocating for women's interests (Seibicke 2020). Second, since the 2010s, gender equality as a policy issue has been downgraded in the social partners' agenda (Elomäki and Kantola 2020), although the Social Europe route had been fruitful in the past (social dialogue notably gave birth to framework agreements which became directives on parental leave, 1996, 2009, and part-time work, 1997).

CHALLENGES: EU GENDER EQUALITY POLICY AMIDST CRISES AND ILLIBERALISM

For a few years, the EU gender equality policy has had to deal with major contextual hurdles: indirect obstacles linked to the consequences of austerity politics, and direct obstacles linked to populist and illiberal attacks. It also has to deal with what Abels and Mushaben (2020) call 'structural limitations', especially the evolution of the institutional balance of power at the EU level, which put to the test the expectations born out of the von der Leyen presidency and its 'new equality agenda'.

First, gender research has highlighted the side-lining of gender in times of crisis in the EU, especially since the 2008 economic and financial crisis (Cavaghan and O'Dwyer 2018; Kantola and Lombardo 2017, 2021; Karamessini and Rubery 2014). The transformed EU economic governance which has followed the Great Recession has led to the implementation of gender-blind policies, even though austerity policies have unbalanced gender effects and disadvantage women, especially the most vulnerable, by reinforcing existing structural discrimination and inequalities in access to resources. The systematic exclusion of gender expertise and consideration of the gendered effects from the reflection, design and implementation of policy solution – such as in the case of the Recovery and Resilience Facility plan adopted in February 2021 – necessarily backlashes. Gender-blind austerity politics has a direct effect on gender inequalities and a negative impact on the legitimacy of the policy aimed at fighting against them.

Second, direct attacks against EU gender equality initiatives for ideological and political reasons have gained importance since a few years (Roggeband and Krizsán 2018; Siim and Fiig 2021). This type of opposition has always been voiced in the EP, now it also directly impacts the work of the Council of Ministers. We have recently seen Bulgaria, Hungary and Poland vetoing draft Council conclusions (i.e., conclusions on gender equality in EU external relations and conclusions on culture in December 2020), or refusing to endorse any document with the term 'gender' (i.e., Poland and the conclusions on the consequences of the Covid-19 pandemic in June 2021). This overt opposition becomes systematic and is sometimes used as a political cover by other member states whose opposition is mainly budgetary. Gender issues have become more politicised at the EU level and are the object of stronger polarisation. The consequences of this phenomenon are twofold for the EU gender equality policy. First, it implies a greater fragmentation, an increasing diversity of meaning and objectives. It puts the very notion of a unified EU gender equality regime to a strain (Krizsán et al. 2014; Walby 2020). Second, both the stronger polarisation and the greater fragmentation mean a difficulty

in agreeing on the ends and means of the gender equality policy. Consensus is more difficult to obtain, which is of course a strong limitation within the EU political system.

A third important challenge to the gender equality policy is linked to the evolution of the balance of power between the three poles of the legislative triangle (European Commission, EP, Council of the EU). In line with analyses considering that European integration is undergoing a phase of ‘new intergovernmentalism’ (Hodson and Puetter 2019), member states have increased their presence and dominance in EU gender equality policy, especially via the enhanced role of the presidency trios in the agenda-setting, design and monitoring of the policy. This stronger role induces a relative marginalisation of the Commission and the EP, traditional driving forces for the development of the EU gender equality policy.

These combined limitations weigh heavily on the EU gender equality policy, especially since, as we have seen before, it approaches this situation from a position of weakness induced by more than a decade of policy dismantling. In these conditions, the EU gender equality policy appears as doubly vulnerable, contextually and structurally. As such it is not in capacity to promote the fight against gender inequalities ambitiously, especially when confronted with political or economic issues with a high degree of salience – the marginalisation of gender equality during the entire Brexit process (Guerrina and Masselot 2021) being a case in point.

CONCLUSION

This chapter started with a demonstration of how typical of the main mechanisms of European integration the EU gender equality policy is. This emblematic character is all the truer when it comes to the meaning and identity of the EU as a political system and a polity. The content and orientation of the EU gender equality regime has for a long time participated in the self-image and definition of the process of European integration, externally, but also internally vis-à-vis its own citizens: ‘gender equality is an important aspect of the foundational myths of the EU’ – whatever the realities supporting this myth (MacRae 2010: 155).

In a time of dire economic, institutional, and political constraints, the EU gender equality policy is at a crossroads and its future will be very telling as to the identity of the EU, what it is and what it should be according to its members. Will it become a domain of disintegration and continued policy dismantling because of lack of consensus on the ends and means? Will it definitively transform into a symbolic or a ‘poster’ policy, characterised by a widening gap between a display of values and principles on the one side, and a lack of concrete effects on the other side? Will it be carried again by political will and leadership? Will it be reinvented and profoundly transformed as an intersectional equality policy? All these questions remain open.

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