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Gender Equality in the European Union Lessons for Democracy?

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Abstract

The gendered nature of democratic decision-making in the EU is the focus of this paper. It outlines a theoretical model of democracy that looks at public decision-making processes through a gender lens: gender democracy. It then takes two instances of democratic decision-making in the European Union relevant to gender equality: the Goods and Services Directive and the Recast Equality Directive. Using the concept 'gender democracy', the paper illuminates the contingent treatment of gender interests in democratic politics at EU level.

Keywords

Deliberative Democracy - Democracy - Directives - Equal Opportunities - European Union - Gender Democracy - Gender Equality - Gender Policy

Introduction

The European Union plays an important role in promoting gender equality across the member states and in its external relations in three ways. First, equality between women and men is recognised as a fundamental human right in various EU treaties. Second, it is declared to constitute a ‘common value’ on which European Union decision-making is based. Third, it informs the framing of policies and actions designed to eliminate gender inequalities.¹ In the course of 50 years, gender equality has moved from being a provision in the Treaty of Rome (Article 119) designed to discourage anti-competitive labour practices to constituting a significant commitment of the EU. This has resulted in a sizeable and disparate corpus of laws, policies, actions and other measures that seek to eliminate gender-based discrimination in employment, employment-related and social fields. In addition, and as a consequence of the Treaty of Amsterdam, the EU promotes gender equality in a positive manner. It does this through a gender-sensitive scrutiny of all policies (gender mainstreaming), legislating for positive preference of the ‘underrepresented sex’, and taking initiatives beyond the employment arena, such as a concern with human trafficking and a commitment to combat gender-based violence.

This impressive commitment to gender equality, which provokes feelings of ‘EU envy’² among feminist scholars from other world regions, is the work of many institutions and individuals. Among them are committed feminist bureaucrats within the Commission, individual gender equality experts, equality-promoting Commissioners, Council members, and MEPs, women’s and equality-seeking organisations, and case findings of the European Court of Justice. Charting the achievements of gender equality from a modest equal pay provision in 1975 to the multi-faceted policy field it is today has been a focus of extensive research since Catherine Hoskyns seminal work on women, law and politics in the European Union (1996). Today, scholars such as Anna Van der Vleuten (2007), Johanna Kantola (2010) and others offer careful analyses of the impact of the EU on member states equality policies, and explore the interaction of academic experts, activists and bureaucrats that has created a ‘velvet triangle’ (Woodward 2004) of highly effective policy actors at the European level. Much of this literature discusses the interaction of EU equality policies with welfare states (e.g. Lewis 1992, Walby 2004), others address the major theme of Europeanisation from a gender perspective (e.g. Liebert 2003), and a third dominant strand examines implementation across member states (e.g. Falkner et al. 2005). A recent thematic addition to this literature focuses on the connections between EU governance, transnational civil society, and democratic legitimacy (Hoffmann and van der Vleuten 2007, Hoskyns 1999), linking the theoretical insights of international relations and feminist politics. The objective of this recent strand is to interrogate the democratic deficit arising from governance beyond the nation state. In this paper, we explore what the decision-making around gender equality in the EU tells us about the quality of democracy ‘beyond the state’ (Lord and Harris 2006: 175-198) from a gender equality point of view. One of the challenges of this research has been to

¹ For recent commitments in this regard, see the *Women’s Charter* – a political declaration setting out five key action areas from 2010 onwards. Available at: <<http://ec.europa.eu/social/main.jsp?catId=418>>. (Last accessed 5 May 2010)

² This phrase was coined by Professor Marian Sawer, Australian National University, in discussion with one of the authors.

conceptualise the theoretical idea of gender justice in empirical terms in order to ask how democratic are European Union decision-making processes in gender equality terms. In contrast to the interest in the EU as a regional democratic player in a global world order, our research focuses on the extent and quality of gender-sensitive democracy within the EU polity. Our efforts are primarily geared towards uncovering the gendered nature of democratic decision-making, though the cases themselves reveal much about the particularities of specific equality policy formulation. The discussion is structured as follows: first, the theoretical basis of the study, gender democracy, is outlined. The next section addresses the policy-making process around the Goods and Services Directive and the Recast Equal Treatment Directive.³ The third section considers the processes in the light of gender democracy, before concluding with reflections on the gendered imprint of EU democratic decision-making.

Gender democracy

Although the term 'gender democracy' has been around for some time (Cockburn 1996; Sarvasy and Siim 1994), it has not to date been utilized by scholars as a theoretical approach for analysing decision-making processes.⁴ However, the deliberative turn in democratic theory has assisted in the reconceptualisation of gender democracy as a framework for assessing the legitimacy of political decision-making (Galligan and Clavero 2008). Although there are varying emphases among deliberative democracy proponents as to what constitutes deliberation, there is agreement on some of the basic features of a deliberative process. This is one in which qualified and affected participants offer reasoned and justified opinions as they attempt to resolve disagreement on a collective problem through coming to a shared understanding that leads to a legitimate decision. This reason-giving examination of a public matter requires that, ideally, all who participate in the process are equals. This expectation of political equality is important in considering gender politics and policies (Young 2000). In an ideal gender democracy, women would be endowed with resources (economic, social, personal and political) equal to those of men so as to enable them join with men as equal peers in exerting popular rule of a polity.

Within this idea of political equality are nested principles of representation, accountability and responsiveness, from which democratic legitimacy is derived. For those who study gender politics, ideas about representation encompass formal (i.e. numerical) and substantive (policy) aspects. Accountability carries an expectation that those who articulate the views of civil society and its interests, as well as those elected to represent, will be accountable to the public or constituency on whose behalf they speak. It also implies that those qualified and affected by a collective problem are included in the discursive problem-solving process. Under the banner of accountability, feminist scholars also expect there to be some transparency about the

³ Council Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services. Directive 2006/54/EC 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).

⁴ Gender democracy has been adopted by the Heinrich Böll Foundation as a 'socio-political vision and organisational principle' for its activist work in promoting gender equality. Available at: <www.boell.or.ke/web/52.html>. (Last accessed 11 Nov 2010).

decision-making process in which these spokespersons, formal and informal, engage. Without this element of transparency, accountability is diminished. As many studies have shown, closed, opaque decision-making perpetuates women's disadvantage in, and exclusion from, public affairs. The issue of responsiveness is a touchstone for feminist politics, as it brings the standing of equality between women and men to the fore. It is, as Jill Sanders notes (1997: 349), more than the formal right of access to, and engagement in, decision-making. In her words, it is about 'equality in "epistemological authority", in the capacity to evoke acknowledgment of one's argument'. There is an expectation that participants will come to the decision-making process with open minds, willing to show respect for the views of women's representatives and other advocates of gender equality. There is also an expectation that there will be accommodation of their views, especially when the subject being debated affects gender relations.

This theoretical model of gender democracy has four basic features: a) It is informed by a substantive conception of democracy; b) It enables an articulation of the principle of political equality which takes into account issues of representation, accountability and responsiveness; c) It gives equal weight to the two fundamental principles of democracy – political equality and popular control; and d) It can be rendered operational through a series of sensitising questions designed to reveal the gendered imprint of the decision-making processes under scrutiny (Galligan and Clavero 2008: 6-7).

Methodology

The assessment of the decision-making processes on the two equal opportunities directives entailed a process-tracing approach that produced a large amount of data, chiefly from documentary sources, to reconstruct the sequence of events from declaration of intent to adoption stage. Though most of the material was readily available on the websites of the institutions and actors participating in those processes⁵, other material had to be explicitly requested in order to fill information gaps. Additional information was gathered from personal email communication with selected actors, as well as from newspaper articles relating to particular events that arose during the process timeframe.

Once the data were collected, the analytical assessment proceeded by applying a range of sensitising questions operationalising the three main principles of political equality: representation, accountability and responsiveness (adapted from Young 2000).⁶ From the 17 indicators comprising a generic gender democracy evaluation developed in a previous study (Galligan and Clavero 2008: 27-30), seven were chosen for their relevance to the EU policy-making process. Each indicator is sensitive to a particular dimension of gender democracy and is used as an analytical prism with which to determine the receptivity of the process to gender-specified demands.

⁵ These include: the European Parliament, the European Commission, the Council, the Committee of Regions, the Economic and Social Committee, the Advisory Committee on Equal Opportunities between Women and Men, the European Women's Lobby and the European Women Lawyers' Association.

⁶ A generic list of gender democracy indicators was developed in a previous working paper (Galligan and Clavero 2008/16), although this list was modified for the study of gender democracy at the supranational level in order to take into account the specific features of EU legislative processes as well as the range of data available.

- REP 1: To what extent did representatives of women's interests participate in the processes under examination?
- REP 2: To what extent were women's interests and perspectives included in the deliberative agenda?
- ACC 1: How accessible were deliberative sites to women organisations seeking to influence decision-making?
- ACC 2: Did women's representatives and equality-seeking civil society organisations have access to information relevant to the decision making process (background and policy documents, minutes and reports of sessions, open sessions)
- ACC 3: Were the positions of key actors involved in the process explained through a reason-giving exercise?
- RES 1: To what extent did participants in deliberation show understanding of women's positions?
- RES 2: To what extent were women representatives and women's positions accorded respect by other actors?

These relatively open questions were formulated so as to provide a qualitative assessment of gender democracy at the EU level. The results of the analysis capture the complexities of democratic practice in the European Union.

The directives: a description of the policy-making process

Goods and Services Directive

The enactment of the Race Equality Directive in 2000⁷, which marked the first extension of EU competence into social affairs, prompted interest in providing something similar for gender equality. Up to that point, the EU had enacted nine gender equality directives in employment and employment-related fields. Council agreement in 2000 to proceed with what was initially called a Gender Equality Directive began an intensive consultative process between the Commission and relevant economic and social interests, various EU committees and advisory bodies, and the Parliament. The Commission cited Article 13 of the Treaty of the European Union as the legal basis of this proposed measure, enabling the European Council to take appropriate action to combat discrimination based on sex (among other grounds)⁸.

The intention was approved at the end of 2000 by the European Council and the Commission began to draft proposed legislation and consult with interested parties. Shortly thereafter, the European Women's Lobby (EWL) sought to influence the scope of the directive to ten areas including gender parity in decision-making, access to and supply of goods and services, and violence against women.⁹ During this time, the

⁷ This was made possible by Article 13 EC in the Treaty of Amsterdam, which empowered the Community to take action to combat discrimination on a range of grounds, including racial and ethnic origin, outside the field of employment (Masselot 2007: 153).

⁸ Article 13 of the Treaty of the European Union which enables the European Council to take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. When the Council acts on the basis of Article 13, it does so unanimously on a proposal from the Commission and after consulting the European Parliament.

⁹ The ten areas for inclusion advocated by the EWL were 1) parity participation of men and women in decision-making; 2) access to and supply of goods and services; 3) taxation; 4) right to reconcile family

EWL worked closely with the formally-constituted Advisory Committee on Equal Opportunities between Women and Men, who were tasked with preparing an opinion for the Commission on this matter.¹⁰ This opinion, issued in February 2002, was very much in keeping with EWL demands.¹¹

Despite the creation of a consensus between women's civic and bureaucratic representatives around the content of the proposed directive, the Commission circulated an unofficial, internal draft that offered a more narrowly-defined directive addressing access to and supply of goods and services including education, taxation, advertising, and the media – all areas included in the Race Directive. However, this early draft provoked a strong reaction from the insurance and media industries. Media representatives launched a hostile campaign in which they argued that the proposed directive – and more particularly its intention to ban gender stereotypes in media and advertising – represented 'an extraordinary move towards censorship' which would clash with the principle of freedom of expression.¹² This campaign included sexist attacks in the print media directed against the Commissioner for Employment and Social Affairs, Anna Diamantopoulou.¹³ The insurance industry argued that the proposal to eliminate sex differences as a factor in the calculation of insurance premiums and benefits would have serious repercussions for the sector, as well as for consumers, since it would result in increased premiums in order to compensate for the loss of accuracy in prediction and risk.¹⁴ In addition to the objections of these interest groups, some Member States, as well as a number of key Commissioners¹⁵ also expressed their opposition to the Commission draft.

When it seemed that the process would stall due to a strong polarization of views among the key actors, women's organisations within the EU institutional framework

and working life; 5) social protection, social security, social benefits and non-occupational healthcare and the fight against social exclusion; 6) education, training and research; 7) family and society-based violence against women; 8) health; 9) the images of women and men portrayed in advertising and the media, 10) the surname.

¹⁰ The Advisory Committee on Equal Opportunities for Women and Men assists the Commission in formulating and implementing the EU activities aimed at promoting equality between women and men. The Committee fosters ongoing exchanges of experiences, policies and practices between Member States and the various parties involved. To achieve these aims the Committee delivers opinions to the Commission on issues of relevance to the promotion of gender equality in the EU. It comprises representatives of Member States, social partners at EU level and NGOs. The Committee was created in 1981 by Commission Decision 82/43/EEC. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31982D0043:EN:NOT>.

¹¹ The full range of areas for inclusion advocated in the Advisory Commission report were 1) decision-making; 2) access to and supply of goods, services and facilities (including taxation and social protection); 3) health; 4) education and training; 5) violence against women; 6) sexual harassment; 7) commercial advertising and the media, 8) and membership of associations.

¹² Financial Times, 'EU plan for law against sexism draws fire', 24 June 2003.

¹³ Articles had titles such as 'Big sister is watching you: Feminist Eurocrat who wants to ban "sexist" TV shows and adverts'.

¹⁴ The views of the insurance sector on the proposal are described in the Commission's document SEC(2003) 1213: Commission Staff Working Paper: *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 - Extended Impact Assessment*

¹⁵ A number of Commissioners expressed deep concerns about the proposal, including the Internal Market Commissioner, Frits Bolkestein; the Trade Commissioner, Pascal Lamy; and the Competition Commissioner Mario Monti (Financial Times, 'EU plan for law against sexism draws fire', 24 June 2003).

(EWL, EWLA, AFEM)¹⁶ continued to lobby in favour of a directive that preserved some of their demands: equality in insurance premiums and benefits, taxation, education, and advertising and the media.¹⁷ In addition, MEPs across political groups involved in the European Parliament's Women's Rights and Gender Equality Committee (FEMM) signed a declaration of solidarity with Commissioner Diamantopoulou, stating that the sexist attacks against her 'put into great danger the adoption of a new proposal for a directive aiming to eliminate sex discrimination'.¹⁸ The revised proposal was a major disappointment for women's advocates, social and political, who claimed not to have been properly informed, let alone consulted, about these changes.¹⁹ The narrow scope of the proposal was also criticised by the EU's Committee of the Regions (CoM) and the Economic and Social Committee (EESC). In the European Parliament, the matter was first considered by the FEMM Committee, which suggested 34 amendments to the proposal, among them shortening the transitional period for the implementation of gender-neutrality in actuarial factors from six to four years²⁰; The report was approved by the FEMM Committee on 16th March 2004, with 29 votes in favour and 3 votes against - indicating a consensus across political groups. It was later voted in a plenary session of the European Parliament (EP), on 30th March, with 313 votes for, 141 against and 47 abstentions - a strong majority which, once again, crossed political lines.²¹

However, during this plenary debate the Commission refused to accept any of the amendments tabled by the EP. Furthermore, none of these amendments were considered during deliberations in the Council. Council discussion on this directive mostly focused on the insurance element: application of the principle of equal treatment to the use of sex-based actuarial factors in the calculation of premiums and benefits in the insurance and related industries²². A small number of member states²³ voiced dissent on the narrow scope of the proposal, echoing the concerns of women actors. The actuarial provisions provoked much stronger polarisation among member state representatives, with some arguing that using sex as an actuarial factor was discriminatory, others concerned with the costs to consumers and industry if sex were removed from the calculations of premiums and annuities. The issue was resolved with an agreement that allowed Member States to permit the use of sex as an actuarial factor provided that this practice was *objectively justified*. Although the German representative did not accept this arrangement, he decided to abstain in order to avoid blocking the directive. The directive was finally adopted on 13th December

¹⁶ EWL: European Women's Lobby; EWLA: European Women Lawyers' Association; AFEM: Association of Women of Southern Europe.

¹⁷ The Commission received statements from the following women's organisations supporting a broad directive that included education, taxation and the media as well as goods and services: EWL (9 July 2003), EWLA (5 September 2003) and AFEM (7 September 2003).

¹⁸ 02.COM.FEMM/03/D_30306/ES/ddl. Available at: <www.karamanou.gr>.

¹⁹ EWL, Annual Report 2003 (available at www.womenlobby.org)

²⁰ Amendment 22

²¹ European Women's Lobby, 'New European Directive on Gender Equality in the Area of Goods and Services Adopted in December 2004'. Available at: <www.womenlobby.org>.

²² Article 4 of the Commission's proposal

²³ These member states were: Belgium, Finland, Luxembourg, Malta, The Netherlands, Portugal and Sweden.

2004.²⁴ The final version outlawed discrimination based on sex in access to and the supply of goods and services to the public²⁵, such as housing, transport, banking and other financial and insurance services (IP/08/1014). Its provisions required Member states to transpose the directive into national law by 21 December 2007 (Art. 17.1)²⁶, and also to consult with 'relevant stakeholders' with a legitimate interest in promoting gender equality when formulating national measures (Article 11). It allowed the insurance sector an extended transitional period of six years for the implementation of the directive, beyond the general transposition period of two years.²⁷

The Recast Equal Treatment Directive

While the Goods and Services directive was marked by a very long and divisive pre-proposal stage, the proposal-drafting period for the Recast Equal Treatment Directive (generally known as the Recast Directive) was relatively short and straightforward. Its origins can be traced to the European Commission's legislative programme for 2003, which included a 'recasting of gender equality directives'.²⁸ The impetus for this move came from the perceived need to take account of European Court of Justice judgments that had clarified and developed the concept of equality (SEC (2004) 482: 2). A Commission communication issued in February 2003 on 'updating and simplifying the community acquis'²⁹ to provide a single text on equal opportunities directives, and set out three different strategies for achieving the task of simplifying and updating equal treatment legislation – consolidation, codification and recasting.³⁰

The proposal-drafting process began with a web-based consultation of member states, interested stakeholders and individual citizens, in which the Commission presented the codification and recasting methods as the most viable options for modernising equal treatment legislation. Codification was discussed as a technical exercise with no substantial changes to existing equal treatment legislation. Two recasting options were presented, one which would integrate six previous equal treatment directives into a single directive³¹ while the alternative recasting option incorporated the

²⁴ The political agreement is outlined in Council document 13369. France entered a note expressing concern about competition-distorting practices of the insurance industry in other member states.

²⁵ <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0113:EN:HTML>>. (Last accessed 11 May 2010)

²⁶ Though a derogation was possible until 21 Dec 2009 if requested and reasons specified before 21 Dec 2007.

²⁷ COM (2003)657 final.

²⁸ COM(2002)590 final

²⁹ COM (2003)71 final

³⁰ Consolidation integrates in a single (non-binding) text the provisions of the original instrument with all subsequent amendments made to it. It does not seek clarification so complexities and ambiguities are not resolved. Codification clarifies the law by bringing together all provisions of an act and subsequent amendments, harmonising terms and definitions. This is a textual exercise which maintains the body of the acquis intact, without developing it. Recasting codifies a pre-existing legal act and subsequent amendments while at the same time allows for the possibility of substantial modification and development of pre-existing law. In addition, it also allows the integration on the body of ECJ jurisprudence into the new instrument.

³¹ These directives were: equal pay, equal treatment in employment (as amended in 2002); equal treatment in occupational security schemes (as amended in 1996) and the burden of proof in cases of sex discrimination.

employment-related provisions of the pregnant workers' directive, thus involving additional substantial changes in existing legislation. It should be noted, however, that this extended recasting option did not consider the inclusion of the health and safety provisions of the pregnant workers directive, nor did it consider the inclusion of the parental leave directive. In addition to the discussion above, the Commission consultation paper stated a preference for Article 141 EC as the legal basis for this directive, entailing that the adoption procedure to be followed was that of co-decision rather than consultation, in contrast with the process followed in the case of the 'Goods and Services' directive.

In total, there were thirty responses to the Commission's web-based consultation. While employers preferred the relatively straightforward codification option, governments' responses were divided between codification and a limited recasting.³² Trade unions, women's organisations and other civil society organisations favoured either the more extended recasting option or a new, more far-reaching recast to include the parental leave directive. Only a handful of women's organisations submitted an opinion to the consultation paper and the participation of women's organisations in the overall pre-proposal process was relatively low, especially when compared to the case of the Goods and Services directive.

The Advisory Committee on Equal Opportunities Between Women and Men issued a majority opinion in October 2003 that favoured an extended recast directive. It also called for the inclusion of the health and safety provisions of the pregnant workers directive, as well as some provisions in the directive on equal treatment for the self-employed (a directive not considered in the Commission's consultation paper). This opinion only represented the views of trade unions and national gender equality bodies. It did not reflect the views of employers, who issued a minority position that clearly favoured a codified directive. In arguing for this minority position, employers stated that no further modification to the existing legislation was necessary, that further amendments to existing legislation would involve costly changes at the national level, and that anything additional to a simple codification would put an unfair burden on employers in acceding countries.³³ The disagreement between employers and trade unions during the consultation process was also evident in an informal meeting organised by the Commission with representatives of social partners at EU level, though divergences of opinion also existed among member states, as became clear in another meeting with the Commission during the pre-proposal stage.³⁴

The Commission finally published its proposal in April 2004.³⁵ It covered the six directives laid out in the integrative recast option, omitting the directives on maternity protection, parental leave, social security and the self-employed. In

³² One exception is Portugal, as it proposed a more far-reaching option than those presented in the Commission document.

³³ Both the Advisory Committee's opinion and the employers minority position can be found at: <http://ec.europa.eu/employment_social/gender_equality/gender_mainstreaming/gender_advcom_en.html>.

³⁴ Information about the consultation process is included in the Impact Assessment Report annexed to the Commission's proposal, SEC (2004) 482

³⁵ COM (2004) 279 final

addition, the proposal incorporated the extensive case-law of the European Court of Justice. The document was welcomed by the Economic and Social Committee (EESC) in its opinion of December 2004,³⁶ which agreed with the Commission that the inclusion of the omitted directives would complicate and lengthen the recast directive. Nonetheless, the EESC called attention to the need to revise and update the directive on the self-employed which, in its view, did not provide sufficient protection for women.

The Commission's proposal gave rise to a 'lively' debate in the FEMM Committee³⁷ that mainly focused on three issues: inclusion of a reference to parental leave in the recast directive; the elimination of distinctions between women and men in occupational pension schemes and the introduction of unisex tariffs; and the need to put more pressure on Member States and social partners to promote gender equality. Deliberations in The FEMM Committee considered the proposal in three separate sessions at the end of which a report prepared by Angelika Niebler (EPP) containing 93 amendments, was adopted.³⁸ The main amendments related to maternity/parental leave and the reconciliation of work and family life.³⁹ However, support for this report did not cross the political spectrum as evidenced by the large number of abstentions during its adoption in the Committee.⁴⁰ The report of the FEMM Committee was adopted by the European Parliament in its plenary session of 5th July 2005, when a total of 93 amendments were approved. During this session, however, the Commission announced that it could not accept a number of these amendments. Of particular note is the Commission's rejection of an amendment proposing a review clause for the parental leave directive as parental leave did not fall within the scope of the recast directive.

The amendment relating to parental leave became the main point of disagreement between the European Parliament, on the one hand, and the Council and Commission, on the other during the inter-institutional deliberations that took place prior to the adoption of the directive. After tripartite negotiations, a political agreement was reached in which both the Council and the Commission made a commitment to put parental leave on top of their gender equality agendas. The recast directive was finally adopted one year later, on 5th July 2006, although the input of the European Parliament in the final text was minimal. Thus, out of the 93 amendments proposed by the European Parliament, the Council only accepted 37, of which 24 related to titles and 10 were already included in the Council general guidelines. The EP secured only three substantial amendments to the directive.

³⁶ 2005/C 157/ 14

³⁷ These were the words used to describe the deliberations in the FEMM Committee by MEP Joachim Wuermeling, speaking on behalf of rapporteur Angelika Niebler, during the plenary session on 5/7/05.

³⁸ A6-0176/2005 Final, adopted in Committee on 26/05/05.

³⁹ These amendments included: to clarify that parental leave is an individual right for every parent; to ensure that any less favourable treatment of a woman who is pregnant or on maternity leave is also deemed discriminatory; to require member states to encourage dialogue among social partners to promote flexible working arrangements with the aim to facilitate reconciliation of work and family life; to ensure that member states conduct awareness campaigns for employers and the public in general on equal opportunities issues.

⁴⁰ The results of the vote were 9 in favour, 1 against and 22 abstentions.

Analysis of gender democracy

In this section, we return to the three principles of gender democracy to elucidate the nature of the processes described above.

Representation

Our analysis of representation is concerned with the extent to which women's representatives participate (descriptive representation), and their interests are taken into account (substantive representation) in the EU decision-making processes. Given the institutional heterogeneity of the EU and the complexity of its legislative processes, applying these indicators requires that we look at a variety of deliberations taking place within and across a multiplicity representative institutions, networks and organisations.

REP 1: To what extent did representatives of women's interests participate in the processes under examination?

Goods and Services directive

The involvement of representatives of women's interests in the process leading to the adoption of the Goods and Services directive was quite strong. From the pre-proposal stage onwards, different trans-national organisations, MEPs, femocrats and gender experts formed a solid advocacy network, with consensus around the main issues they wished to see included in the Directive. This network actively lobbied different EU institutions (Commission, European Parliament, and Council) depending on the stage of the legislative process. In this context, it is instructive to note the role played by organisations such as the EWL, EWLA and AFEM – supported by other organisations such as the Federation Europeenne des Retraites et Personnes Agees (FERPA) and the European Disability Forum. These organisations sent statements to the Commission during the pre-proposal stage, all of which were very similar in content. The EWL in particular played a prominent role throughout the whole process, as it took the lead in a lobbying campaign for a wide-scoped directive by drafting a shadow directive at the pre-proposal stage and it continued campaigning through to the later stages of the process, when the directive was debated in the Council.

Experts at the European Commission's Advisory Committee on Equal Opportunities for Women and Men represent the interests of social partners and women's policy agencies at the national level. The Advisory Committee worked in close cooperation with the EWL in preparing an opinion for the Commission, the content of which was very much in line with that of the EWL shadow directive.

MEPs of the FEMM Committee Members expressed public solidarity with the Commissioner for Employment and Social Affairs when she became the target of an aggressive campaign against the Commission's draft proposal. The FEMM Committee also played an important role in enhancing dialogue and awareness among actors representing diverging interests and the wider public, by way of organising a public hearing during the pre-proposal stage where the main issues involved in the directive were discussed among a variety of key stakeholders (insurance industry, media industry, women's organisations, national women policy agencies, and others).

In sum, the solidity of women's advocacy networks during this process was illustrated not only by their high level of institutional involvement but also by their ability to adopt a common position and to speak with one voice.

Recast directive

In contrast to the Goods and Services directive, the level of involvement of women's organisations during the process leading to the adoption of the Recast directive was relatively weak. The web-consultation launched by the Commission during the pre-proposal stage and opened to member states, stakeholders and individual citizens resulted in thirty responses, only seven of which came from women's organisations and related groups.⁴¹ The European Women's Lobby did not participate in the process leading to this directive and the only trans-national women's organisation providing an input into this process was the European Women Lawyers Association (EWLA) at the stage when the Commission's proposal was being deliberated in the EP's FEMM Committee. The low level of involvement on the part of representatives of women's interests in the Recast process was coupled with a lack of a common position, as evidenced by the different views among FEMM Committee members during the first reading of the Commission's proposal.⁴²

One explanation of the lack of involvement of women's organisations in the recast process could be the widespread perception that this directive mainly concerned technical, rather than political, issues. This was the main reason put forward by the policy director of the EWL when, in a personal email communication with the authors, she explained the reasons why the organisation did not participate in this particular legislative process.

At the time, it was mainly a question of workload and also the fact that this was a very technical/legal issue, more than a political issue, which resulted in the EWL not being very active during the adoption process of the recast directive, even if I agree that it would have been good to be more involved. Our understanding at the time was that it was more a technical exercise of putting together legislation than improving or revising it.

EWL policy director, Nov 2008

Nonetheless, even if the involvement of civil society organisations in the process leading to the Recast directive required high levels of legal expertise, this does not necessarily entail that this process only consisted of a technical exercise, as was the initial perception of the EWL. In fact, two of the three options presented in Commission consultation paper entailed some level of revision of existing legislation, which opened the possibility for politicisation of the main issues involved. This

⁴¹ These were: The Clara Wichman Instituut, the Estonian Women's Associations Roundtable; the European Equality and Diversity Forum; Justice (UK legal and human rights organisations); the German Women's Lawyers Association; the UK Discrimination Law Association; and the European Association of Public Sector Pension Institutions.

⁴² The existence of diverging positions among members of the FEMM committee was reported by the Deputy rapporteur during the plenary session where the first EP reading of the Commission's proposal was debated.

politicisation role, however, was taken up by MEPs in the FEMM Committee, who took this opportunity to put the issue of parental leave on the agenda and to draw attention to the need for further revisions of the EU gender equality *acquis*.

The lack of involvement of civil society organisations and their perception of the Recast directive as a technical process may not be a mere oversight on their part, but may rather point to a failure (on the part of the Commission) to communicate in a clear manner the implications of the recast strategy to all interested parties. On this point, Burrows and Robison (2007:188) argue that the Commission consultation paper is unclear as to the extent to which the recast technique can be used as a tool to modify existing EU legislation on gender equality. If this is true, then the recast process can serve as a good illustration of how the democratic principles of representation and accountability can interact with one another during the EU political process. At the same time it raises a question about the relationship between the nature of those processes (whether primarily 'technical' or 'political') and their overall democratic quality.

REP 2: To what extent were women's interests and perspectives included in the deliberative agenda?

This indicator aims to assess the substantive representation of women, understood as the feminisation of the political agenda in EU legislative processes on gender equality. A comparison of this indicator between the two case studies under investigation reveals that, while in both cases the level of inclusion of women's interests clearly diminishes as the processes progress, the type of decision-making procedure that was followed in each case had a significant influence on the overall results.

Goods and Services directive

An examination of the process leading to the enactment of the Goods and Services directive from its beginnings to its adoption reveals that the level of inclusion of women's interests and perspectives into the deliberative agenda gradually diminished from 'partial inclusion' to 'no inclusion'. As a result of this, the final directive that was adopted by the Council barely resembled the shadow proposal that was submitted by the European Women's Lobby during the pre-proposal stage. The dilution of this directive began in the very early stages of the process, when the Commission decided during the pre-proposal stage that inclusion in the directive of certain areas advocated by representatives of women's interests (such as, e.g., parity participation) were to be removed from the deliberative agenda and, therefore, not to be considered in subsequent deliberations. During this stage, the proposal was diluted once again when, following pressure from other stakeholders, important areas for women such as education, taxation and advertising and the media were removed by the Commission from the scope of the proposal. Given the agenda-setting role of Commission, this action had a significant effect on the level of inclusion of women's interests during the remainder of the legislative process. Nor were these issues re-entered, despite a large number of actors (women's organisations, MEPs in different EP Committees, the Committee of Regions and the Economic and Social Committee) expressing disappointment at the narrow scope of the proposal. Hence, the European Parliament did not adopt any substantial amendment regarding the scope of the

directive (albeit some efforts to bring this issue back to the political agenda)⁴³ and, once the proposal reached the Council, deliberations in this institution did not even take the EP opinion into consideration. Instead, Council deliberations centred on the ban of using sex as an actuarial factor in the calculation of premiums and benefits – a provision included in the Commission proposal but on which a number of Member States had expressed reservations.

Recast directive

The extent of women's substantive representation during the Recast process was, by comparison, relatively higher than in the case of the Goods and Services directive, especially during the inter-institutional process. During the pre-proposal process, however, women's interests were only partially included. Thus, neither the option to incorporate the maternity directive in the Recast – an option considered in the Commission's consultation paper – nor the option to incorporate the parental leave directive – an option discarded from the beginning but advocated by some women's organisations – were included in the proposal. Yet, even if the Commission finally opted for a directive that excluded maternity as well as parental leave, once the inter-institutional process began, these issues continued to be on the political agenda until the adoption stage. In sum, the level of women's substantive representation during the inter-institutional process of the Recast directive was appreciably higher than in the Goods and Services directive.

It was the European Parliament, and most particularly the FEMM Committee, that ensured that issues of parental leave were kept on the political agenda during the Recast process. Not all political groups, however, supported the view that the Recast directive should include parental leave. While MEPs of the Socialist Group and the Greens supported this inclusion, members of European People's Party took a more conservative position. EPP MEPs expressed the view that to bring the parental leave directive into the recast proposal would entail a significant modification to EU law, which they did not deem opportune at the time. The compromise reached in the Parliament was to introduce an amendment that urged Member States, social partners and other stakeholders to review the parental leave directive, with a view to 'improving the situation of women and men who find it difficult to reconcile family and work commitments'. Although this amendment was not incorporated into the final text of the directive (as neither the Council nor the Commission could accept it) a compromise between these three institutions was reached in which the Commission and the Council acknowledged the importance given by the European Parliament to parental leave issues and made a commitment to improve opportunities for reconciling of work and family life.

In summary, the above analysis reveals the important role played by the European Parliament in ensuring representation, in descriptive and substantive terms, for women's groups and views during the processes leading to the Goods and Services directive and the Recast directive. What emerges from the comparison between the two cases is that the more decision-making power the European Parliament has, the most likely it is that women's interests will be kept on the political agenda throughout the process. Thus, the fact that the Recast directive was adopted by the co-decision

⁴³ Some political groups of the European Parliament tabled a number of amendments aimed at broadening the scope of the directive, but at the end these were not adopted by the plenary.

procedure appears to have been a determining factor in ensuring women's substantive representation. In the Goods and Services directive, where the procedure followed was that of consultation, the issues raised by the European Parliament and women's organisations disappeared from the political agenda once deliberations concentrated in the Council.

Accountability

Our three indicators of accountability are designed to measure the access to, and availability of, information about the positions of different actors in the process, the degree to which different positions were explained as well as availability of information about the processes.

ACC 1: How accessible were deliberative sites to women organisations seeking to influence decision-making?

The level of access of women's organisations to deliberative sites was similar in the two legislative processes under study. In both cases, we observe a differential institutional access, with restricted accessibility to the Commission, full accessibility to the European Parliament and divergent accessibility to the Council, because of the different rules under which each directive was processed.

Goods and Services directive

During the pre-proposal stage leading to the adoption of the Goods and Services Directive, access to deliberative sites seems to have been limited to the main transnational women's organisations - i.e., those who are regularly engaged in dialogue with the Employment and Social Affairs Directorate - as there is no evidence of participation of smaller organisations operating at national, regional or local levels. All of those organisations submitted an opinion, and were kept informed of progress in the drafting of the Commission's proposal. In addition to this, the EWL had observer access to the meetings of the Advisory Committee on Equal Opportunities at the time that this body was drafting of an opinion for the Commission. Nonetheless, when the Commission decided to change the content of its draft proposal due to criticisms from other stakeholders, women's organisations claimed not to have been informed about this change and implied that other actors were given preferential access. At any rate, accessibility to the Commission during the consultation process was at best restricted - as women's organisations could only submit documentation in the form of opinions, statements or shadow proposals - and the main opportunity for them to speak during the pre-proposal stage was not provided by the Commission but by the European Parliament. This was during a public hearing organised by the FEMM Committee which gave women's organisations and other stakeholders (such as the insurance and the media industry) to present their views on the directive, which later formed the basis on which the FEMM Committee drafted its opinion. It seems, then, that in this case the European Parliament acted to compensate for some deficiencies in the consultation process with the Commission.

However, after the Commission issued its proposal and the process entered its inter-institutional stage, the accessibility of deliberative sites to women's organisations became much more limited, if virtually non-existent. This is because Council meetings were confined to a limited range of participants, and excluded the European

Parliament. An additional barrier for women's organisations, and non-governmental organisations in general, in exerting some influence on Council debates is that these groups did not have access to information about the content of those deliberations. This made it very difficult for non-governmental groups to participate at this vital decision-making stage in any meaningful way (Butler 2008).⁴⁴

Recast directive

Patterns of access for women's organisations to deliberative sites were not very different during the legislative process leading to the adoption of the Recast directive, though EP representatives were part of Council deliberations. During the pre-proposal stage, women's organisations had the opportunity to submit a written opinion. The open consultation engaged in by the Commission meant that access opportunities were broadened to a larger pool of potential contributors than was the case of the Goods and Services directive. Once again, women's organisations had more access to the deliberations conducted through the European Parliament than to other institutional settings. During this stage, the main participating organisation was the European Women's Lawyers' Association (EWLA) which presented an opinion statement at a meeting of the FEMM committee.⁴⁵ As was the case in the Goods and Services directive, women's organisations did not have access to Council deliberations during the adoption stage of the Recast directive, though the EP participants did advance gender equality arguments.

ACC 2: Did women's organisations and the public have access to information relevant to the decision-making process (background and policy documents, minutes and reports of sessions, open sessions?)

In recent years, the Commission has made important efforts to improve transparency during the pre-proposal stage by publishing extended impact assessment reports. These reports (which are annexed to the Commission's proposal) serve to enhance the transparency of the Community regulatory process by way of providing well-documented proposals. The reports contain information about the objectives of the legislation being proposed; the issues and problems involved; the policy options considered; the potential impact of each of those options; and the consultations conducted with relevant stakeholders in preparing the proposal.⁴⁶ However, while these reports lend much more visibility to pre-proposal processes in the Commission, the information provided is sometimes vague. For example, in the impact assessment report annexed to the proposal for the Goods and Services directive, the Commission justified the exclusion of taxation, education and advertising and the media from the scope of the directive by claiming that the evidence of gender-based discrimination in these areas was less clear-cut than in the area of insurance '*or that it was not apparent that the difficulties could be resolved through legislative means*'. It concludes that '*[T]he Commission has decided therefore that other means would be more appropriate to deal with these issues*'.⁴⁷ However, no assessment of the potential impacts of this policy option

⁴⁴ Nonetheless, there are some potential indirect channels of information and influence through the Commission or through representatives of member states in the Council deliberations. As of now, we have no information as to whether, and the extent to which, these informal channels were pursued by women's organisations as this needs information can only be gathered through interviews.

⁴⁵ On 6th March 2005

⁴⁶ "Better Regulation Plan" -see documents COM(2002)278, COM (2002) 276, COM (2003) 657 final

⁴⁷ *Op. cit.*, p.15

(both positive and negative) is provided. These gaps of information were also found in the impact assessment accompanying the proposal for the Recast directive. In this case, the report did not provide a detailed record of the organisations responding to the consultation call, or a detailed description of the responses submitted by each of them. Instead, the information on the consultation process that is provided is quite general in nature.

Despite these developments, however, women's organisations still had to rely on informal channels of information during the pre-proposal stage, since impact assessment reports were only published towards the end of this stage, together with the Commission proposal. The relative absence of documented official analysis during the relatively fluid discussion period meant that the level of transparency during the consultation process fluctuated, depending on how much information the Commission provided. It has already been mentioned how, during the pre-proposal stage of the Goods and Services directive, women's organisations were informed about developments in the drafting process, but only up to a point. While these organisations had access to an early, unofficial draft proposal, they claimed not to have been informed when the Commission planned to narrow its scope in significant ways. Yet, because these changes were of direct relevance to the interests represented by these organisations (and significant 'qualified and affected' members), the fact that the Commission did not inform them about these changes meant that they were effectively stripped of the opportunity to consider and issue a reply.

Turning to the information made available to women's organisations and the public during the inter-institutional and adoption stages, this is a matter which is highly regulated. As a result, there were no major differences found between the two case-studies. With respect to the quality of information provided by the European Parliament, the picture is more mixed. While there was public access to verbatim reports of plenary meetings, there was limited information about the content of debates taking place in Committees (as no verbatim reports were available). Yet, it is in committee meetings of the European Parliament where real deliberation took place. In contrast, the EP plenary sessions were highly formal exercises, following the general practice for MEPs to write out their speeches and read them into the record (Footitt 2002: 36-7). Committee meetings were usually public, which meant that women's organisations and European citizens could sit in as observers.

The quality information provided by the Council was the poorest of the three EU institutions. Although the Council had a public register with access to meeting agendas and minutes, written records of deliberative sessions were not always available. In the case of the Goods and Services directive, reports are available of the deliberations that took place in the working groups, outlining the different positions taken by Member State representatives and the Commission on controversial issues such as the ban in the use of sex in actuarial factors. Yet, for the Recast directive, no written records were available on the important tripartite negotiations between the Council, the Commission and the European Parliament at the decision-making stage of the process.

In assessing the availability and quality information made available to the public, we also examined the information provided by the European Women's Lobby, with a

view to ascertain how transparent this organisation was with regard to its lobbying activities as well as its role in communicating EU law-making on gender equality to European women. The quality of this information was found to be of a high order.⁴⁸ First, it regularly published updated information on its website (though newsletters and annual reports) which explained the contents of the directive as well as progress made at every step of the process. Second, it made the documents that were submitted to the Commission during the consultation process (such as letters to the Commissioner, opinions and statements) available through its website. Third, it provided information describing how its opinions were drafted (i.e., 'Shadow Directive') detailing the range of internal consultations that were conducted as well as the expertise that was sought out in order to aid that drafting process.

In sum, the availability of information on the decision-making processes under investigation varied depending on the institution in question and the stage of the process. Thus, while the Commission provided partial access to information on deliberations to women's organisations and the public, the level of access allowed by the Council was more restricted. As a result, important gaps in information were found both at the pre-proposal and the decision-making stages when this indicator accountability was applied to the two case-studies. Of all the EU institutions, the European Parliament was found to be the most transparent, with partial-to-full access to information on deliberations. Finally, the analysis highlighted the important role of women's organisations in enhancing the accountability of EU legislative processes on gender equality.

ACC 3: Were the positions of key actors involved in the process sufficiently explained through a reason-giving exercise?

The principle of accountability not only requires that the public (either a general public or a policy network) is informed about the objectives, contents and progress of the policies being developed, but also about the reasons that justify the positions of the actors involved in the decision-making process. This information lends transparency to EU policy-making as well as enhancing the accountability of the actors and institutions involved.

One characteristic feature of legislative processes at the EU level is the prominence of reason-giving practices throughout such processes. Thus, the positions of the different institutions involved, as well as every course of action taken by them (e.g., amendments proposed by the European Parliament and their acceptance or rejection by the Commission and the Council) tend to be accompanied by reasoned justification of these positions. In analysing the processes leading to the two directives under study, this feature was found to be especially marked in the Recast directive process, as co-decision procedures required that the Commission, the European Parliament and the Council engage in deliberative discussions aimed at reaching a consensus. In consultation procedures, by contrast, the Council was the only institution with decision-making powers and it was not required to provide justifications of its actions to the other EU institutions. Thus, in the case of the Goods and Services directive the Council did not explain why it adopted, rejected or ignored each of the amendments

⁴⁸ This refers to information given on the Goods and Services directive only, as this organisation was not involved in the Recast Directive.

made by the EP. In this sense, the analysis lends support to the idea that the more inter-institutional in character EU decision-making processes are, the higher their democratic quality with respect to this indicator of accountability.

While the level of transparency of EU law-making in co-decision processes was found to be quite high at the inter-institutional stages of the process, the same cannot be said when we turn our attention to pre-proposal stages, since the justifications provided by the Commission for its actions in impact assessment reports (i.e., the reasons for excluding some options from consideration as well as for accepting or rejecting other options) were found to be only partial.

Finally, it is important to note the vital role that Member States played in enhancing or obstructing the transparency of EU legislative processes, especially in the cases when such processes followed the consultation procedure. Thus, the noted lack of transparency of Council deliberations in the Goods and Services directive is an aspect that limited accountability to the Member States own citizens. The widespread perception of the EU as an opaque political entity usually has the Commission as its focus. The problem, however, extends to the Council, as national governments seem less open to having their positions scrutinised than either the Commission or the EP.

Responsiveness

RES 1: To what extent did participants in deliberation show understanding of women's positions?

RES 2: To what extent were women representatives and women's positions accorded respect by other actors?

There is little material available from which to assess levels of responsiveness (recognition and respect of women's claims) throughout the process, since the most reliable sources of information are verbatim reports of deliberative sessions. With the exception of the European Parliament, it is impossible to assess responsiveness in other settings such as the Commission or the Council and hence the information gaps for this indicator are significant. Three plenary reports of debates in the European Parliament were analysed: one for the Goods and Services Directive (on 29th March 2004) and two for the Recast Directive (on 5th July 2005 and on 1st June 2006).

These reports show that the majority of participants showed recognition for the groups affected by the decision (not only women, but in the case of the Goods and Services directive, the insurance industry as well). No negative remarks about the groups representing the variety of interests involved were made. Recognition and respect (as aspects of responsiveness) cut across the political spectrum, although political groups on the left tended to put more emphasis on the inequality between women and men and the need to reverse this state of affairs. Although the research found no evidence of a violation of respect in deliberations in EU institutions, there is evidence of a violation of this aspect in the wider public sphere – more particularly in the context of a campaign against the Commission proposal launched by the media, which included sexist attacks in the media of Commissioner for Employment and Social Affairs, Anna Diamantopoulou.

Goods and Services directive

During the debate on the Goods and Services directive in the EP all of the political groups made reference to the prevalence of gender-based discrimination in society. The main point of disagreement between these groups was whether the use of sex as an actuarial factor constituted discrimination, and therefore whether its banning represented a positive step towards a more gender equal society. Even speakers from the European Peoples Party, the group most supportive of the removal of this ban, began their speeches by expressing their wholehearted support to ending gender inequalities, as the extract from MEP Astrid Lulling (EPP) typifies:

Mr President, as long ago as the 1960s, I was fighting for equality between women and men and against discrimination based on sex. I have been fighting since 1963 for equal treatment and opportunities between men and women, in women's organisations, at national and at European level, and most of the time as president. I cannot, therefore, be accused of not promoting the implementation of the principle of equality between women and men by directives covering all fields. I also therefore believe that there is a real legal and moral obligation to support this proposal for a directive establishing equal treatment in the access to and supply of goods and services. In politics, however nobody is forced to do what is impossible or absurd.

At the same time, conservative political groups tended to highlight also the difficulties that the insurance industry would have to face in trying to comply with the new directive, although there were some speakers from other sides of the spectrum who also explicitly acknowledged this point, such as MEP Elspeth Attwool (ELDR):

I can understand the concerns of the insurance industry. The proposal will bring considerable changes to its practices and at present it is uncertain as to how to go about implementing these changes. Understandably industry never likes uncertainty. However, I do not understand industry's argument that the current use of gender to differentiate premiums and benefits is not discriminatory because it is based on objective factors.

It should be highlighted that recognition of the concerns of the insurance industry was also voiced by other women's and equality advocates such as Commissioner Diamantopoulou and the Equal Opportunities Commission of Great Britain.

Recast directive

Turning to the analysis of debates on the Recast directive, the findings are very similar. Thus, there was also disagreement among political groups on the content of the Commission's proposal – though arguably less than in the debates on the Goods and Services directive. Thus while MEPs from the left side of the spectrum 'deplored' the absence of the directive on equal treatment of the self-employed and the parental leave directive, conservative MEPs remained silent about this and instead emphasised the need to respect the principle of subsidiarity which leaves Member States the option to decide on measures aimed at reconciling work and family life. Conservative MEPs warmly welcomed the FEMM Commission proposal, while MEPs from the Socialist Group did not make any explicit comment on it. Despite these differences, all

participants in the debate clearly showed recognition for the groups affected by the new measure, citing specific problems needing urgent attention such as pay differentials between women and men or the reconciliation of work and family life.

Concluding reflections: lessons for democracy

This paper presented the early findings of an analysis of the democratic quality of EU legislative processes on gender equality. For comparative purposes, two case-studies were selected: the processes leading to the adoption of Goods and Services directive and the Recast Equal Treatment directive.

The findings reveal that the quality of democracy of these processes – measured in terms of representativeness, accountability and responsiveness – varied across EU institutions, shaped by the type of decision-making procedure being followed, the degree of involvement of representatives of women’s interests and the formation of strong women advocacy coalitions, as well as by the level of consensus/disagreement among key actors on the issues involved.

First, different EU institutions allow for different degrees of representativeness, accountability and responsiveness of deliberative practices associated with legislative processes. Thus, findings from this research show that the gender-democratic quality of deliberative processes in the European Parliament was noticeably higher than in the Council, while the democratic quality of deliberation orchestrated by the Commission sat somewhere in between. These patterns could be found for the two case studies under examination, despite the fact that the gender-democratic quality of deliberative practices in each of those institutions was also shaped by other factors.

Second, the type of decision-making procedure being followed was found to be a determining factor when assessing the quality of democracy from a gender point of view. The results show that co-decision procedures enhanced the overall level of representativeness since, by giving decision-making powers to the European Parliament, it allows the involvement of a powerful advocate of women’s interests (the EP FEMM Committee) from the early stages of the process until the very end. However, the absence of civil society gender representatives from this process must be considered a deficit of this deliberation. By contrast, in consultation procedures such as the one followed in the adoption of the Goods and Services directive, the participation of representatives of women’s interests during deliberations at the adoption stage was nil. Furthermore, the fact that the opinion of the European Parliament is not binding on the Council meant that this latter institution could ignore the EP’s amendments, excluding them from the discussion. Finally in the consultation procedure the level and quality of justifications of the different positions was of a lower order than in co-decision procedure. At the same time the research found that in these consultation procedures, the justifications provided by representatives of different member state states in Council deliberations followed a utilitarian logic rather than an equality-seeking one.

Third, the study found that the involvement of representatives of women’s interests and the formation of strong advocacy coalitions between MEPs, women’s organisations, femocrats and gender experts during the process leading to the Goods

and Services Directive (particularly at the pre-proposal stage) acted to enhance the overall democratic quality of the process, in relation to the three types of indicators of democratic quality. This stood in contrast to a very low involvement of advocates of women's interests during the drafting of the Recast directive. It is clear that in the Goods and Services directive there were other intervening variables at play which offset the impact of a high level of participation of women's advocates on the overall democratic quality of the process. The analysis further suggests that the level of involvement of women advocates in EU legislative processes depends of the political salience of the issues at hand. This would mean that legislative processes involving issues that are perceived as 'technical' are likely to attract lower participative levels and may therefore be poorer from the point of view of democratic quality, if in fact more successful from the point of view of actual gender equality outcomes.

Fourth, the findings suggest that the degree of polarisation of positions with respect to the issues involved in the processes significantly affects their democratic quality. The analysis presented here reveals that the strong disagreement between actors involved in the Goods and Services process had an impact on the levels of accountability and responsiveness. In this context, the role of the European Parliament in striving for consensus and reaching a compromise (both among different political groups and with the Council) needs to be highlighted.

In sum, the picture that emerges from our analysis of gender democracy in EU legislative processes is mixed. On the one hand, the research exposed a number of democratic virtues of the EU decision-making process, especially in relation to its deliberative, reason-giving elements that indicated a degree of responsiveness to women's, and gender equality, voices and perspectives. Also marked is the potential for consensus-building on an equality agenda between political actors and civil society. On the other hand, deficiencies in access and inclusion of gender equality advocates (including the EP) at critical points of decision-making, along with restrictive procedural processes and the priority in both cases accorded to economic interests by the Council and Commission combined to limit the possibilities of realising gender democracy.

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