



## **Quality in Gender+ Equality Policies**

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Integrated Project

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# 1. Review of Equality Policies and Responsible Institutional Structures

## 1.1 History of Equality Law and Policy

From its beginnings in 1957 with the inclusion of Article 119 on equal pay between women and men for equal work (now **Article 141**) in the Treaty of Rome, Gender Policy in the European Union has been mainly focussed on the concept of equal opportunities and equal treatment in employment and the labour market. In this area, a number of legally binding Directives have been approved. Due to the introduction of gender mainstreaming in the 90s and some new changes with the enlargement of the EU, the Union approach to gender inequality has widened to incorporate new areas of policy making, such as family policies (although we cannot affirm it is a European competence yet), gender-based violence, equal political representation, or public health. However, these areas are not regulated through legally binding Directives but through soft law instruments.

Several changes have transformed the European context over recent years regarding the involvement of civil society in the Community's legislative process. The Social Policy Agreement alongside the Treaty of the EU opened the way to the social participation. Nevertheless, as Annick Masselot states, the involvement of civil society in the European legislative processes "remains largely limited" (2007: 166).

From the 1997 Amsterdam Treaty onwards, the EU has also opened a new anti-discrimination policy strand which represents a shift from addressing gender inequality to addressing multiple inequalities in the EU policymaking, although anti-discrimination is still essentially tackled in the labour market. These new grounds of discrimination are racial or ethnic origin, religion, belief, disability, age or sexual orientation. Thus, European gender equality law began to be connected to other complex social inequalities. As a result, it opened a new perspective of analysis and implementation of politics which falls under the intersectionality approach. In other words, this is how "the scope of supranational legislation on gender equality has been extended (...) to promote equality outside the workplace and tackle violence against women" (Van der Vleuten, 2007: 249). **Article 13 of the Treaty of Amsterdam (ToA)** expresses that the Council, under unanimity voting rules and consultation of the European Parliament (EP) "may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation"<sup>1</sup>. Although this is a difficult procedure, there have been two directives implemented on the subject.

Firstly, **the Racial Equality Directive 2000/43/EC** which prohibits discrimination on the grounds of race or ethnic origin not only in employment but outside of the labour market. Education, social protection and access to goods and services, including housing, were introduced in the law. It also allows for positive action measures to be taken, in order to ensure full equality in practice and prohibit harassment. In many aspects, this directive is more complete and stronger than the sex discrimination laws, a fact that provoked considerable criticism from women's organizations and pressure to widen the scope of sex-based antidiscrimination measures.

**Directive 2000/78/EC** on equal treatment in employment and occupation is very similar to the other but extends the prohibition of direct or indirect discrimination to the grounds of belief, disability, age

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<sup>1</sup> The Charter of Fundamental Rights of the European Union enlarges the fields where discrimination is prohibited.

or sexual orientation. This law does not enlarge the scope of the prohibition beyond the employment so, in many senses, it fails to tackle the fight against discrimination.

Also in the **Green Paper** on “Equality and non-discrimination in an enlarged European Union” (2004) the European Commission addresses an integrated approach to impeding and preventing discrimination.

The European trend in the field of gender equality has progressively evolved since 1957 although, as it is emphasized above, the concept of gender equality has not really been extended beyond the workplace through legally binding measures (with the exception of the 2004/113/EC Directive)<sup>2</sup>. In the Treaty of Rome the main objective of gender equality was linked to the market with the aim to prevent distortions in competition among countries. However, the introduction of Article 119 on equal pay between women and men for equal work (now Article 141), was also the result of women’s mobilisation, and national and international pressures on Member States. **Article 141 EC** sets the legal foundation for EU legislation on equality between men and women as well as enabling further Directives on the issue. Article 141.1 establishes the principle of equal pay for male and female workers for equal work or work of equal value. Article 141.3 provides the legal base for EU legislation on equal pay in employment and in the context of occupational social security schemes.

In the 90s the concept of gender equality appeared as a way to fight against unemployment and to attain more competitiveness through women’s role in revitalising the economy (Van der Vleuten 2007). The Treaty of Maastricht (1992) and also the Treaty of Amsterdam (1997) extended the scope of EU policy making. The Treaty of Amsterdam represented an important step forward in the EU gender equality policies, due to the introduction of Article 3.2 on gender mainstreaming, the definition of positive actions in Article 141.4, and the inclusion of the new Article 13 on non discrimination. The IV World Conference on Women in Beijing (1995), where the gender mainstreaming strategy was officially launched, had an influence on the EU gender equality policies as well, by promoting the inclusion of gender as a part of general policy guidelines. Nevertheless, it is important to stress that Article 13 of the ToA, despite not having direct effects, transcends the ground of the labour market and employment in the field of equal treatment involving not only workers but citizens and providing the general basis for legislation to combat discrimination based on sex outside the employment field (Van der Vleuten 2007: 253).

Another point of the Treaty of Amsterdam we have to emphasize concerns **Articles 2 and 3 EC**, introducing the concept of gender mainstreaming in the EU, and defining integration of gender equality in all policies, at all levels, and at all stages of the policy making process (Council of Europe 1998). Article 2 EC addresses equality between men and women as a specific objective whereas the task of eliminating inequalities in all of the areas of the Union activities is attributed to the Community in Article 3.2 EC.

Before 1995, six Directives on gender equality policies and three Community Action Programmes on equal opportunities for men and women were approved. **Directive 75/117 EEC** was adopted to implement the principle of equal pay and extend its meaning not only to ‘equal work’ but also to ‘work of equal value’. One year later the EC approved **Directive 76/207 EEC** (amended by Directive

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<sup>2</sup> In this section we will focus on the EU legally binding Directives, while soft law measures will also be tackled in the issue histories sections.

2002/73 EC), the main piece of legislation on equal treatment of men and women in matters of employment and occupation.

In the 80s **Directive 86/613 EEC** extended the principle of equal treatment at work also to self-employed workers and their assisting spouses. Under the Directive, Member States are required to take action to eliminate discrimination on grounds of sex in a range of matters, such as establishing a business or activity, forming a company, and providing for social security schemes for spouses of the self-employed. This complements the separate legislation on equal treatment in employment and occupation, occupational social security, and statutory social security, which also applies to self-employed persons in some circumstances.

Two more directives were implemented before 1995 on social security. **Directive 79/7 EEC** prescribes the elimination of direct and indirect discrimination based on sex in statutory social security schemes provided for the working population. It applies to schemes such as state old age pensions and sickness insurance for workers. **Directive 86/378 EEC** (amended in 1996 by Directive 96/97/EC) extends the principle of equal treatment also to private or occupational social security schemes. Finally, again in the field of employment, **Directive 92/85/EEC** deals with the protection of health and safety of pregnant workers and workers who have recently given birth or are breastfeeding. It also addresses maternity leave and discrimination in the work place. Because of the opposition of the countries for being too protective and costly, the directive sets minimum requirements and therefore the original proposal had to be weakened (Van der Vleuten 2007).

Regarding the **Community Action Programmes on equal opportunities for men and women** before 1995, the first one (**1982-1985**) planned some directives about individual rights for women and had a legally binding approach. The second one (**1986-1990**) was less centred on legally binding measures but at the same time was wider in its perspective on gender equality. The third action programme (**1991-1995**) kept the wide-ranging trend and more comprehensively introduced a gender mainstreaming approach in the EU policymaking, although its legal proposals were not binding but rather soft law measures. Nevertheless, it was the first policy initiative to pay attention to the promotion of women in political, economic and social decision-making processes.

After the Beijing Conference in 1995 the Fourth Community Action Programme on equal opportunities (**1996-2000**) was approved, which planned no binding laws and had a reduced budget. The NOW programme was replaced by EQUAL which had no specific mention to women as a discriminated social group. As a result of the IV World Conference of Women, gender mainstreaming appeared as an essential concept and strategy even though the way to its effective implementation was not tackled.

The 5<sup>th</sup> Action Programme on gender equality from **2001 to 2006** was specifically focused on gender mainstreaming. It tried to go beyond the labour market area but, as happened in the other plans, no binding measures or instruments were approved to better control and monitor the implemented actions.

In conclusion, the Action Programmes on gender equality have progressively evolved from a more to less legally binding approach. However, a gender mainstreaming perspective has been introduced and it had the result of enlarging the grounds of equality actions beyond the market related area. The **Roadmap for equality between women and men (2006-2010)** adopted by the Commission in

2006 is a good example of this. Built on the experience of the last Action Programme, the Roadmap reaffirms the dual approach of gender equality based on gender mainstreaming and specific measures. Six priority areas for EU action on gender equality were outlined: equal economic independence for women and men; reconciliation of private and professional life; equal representation in decision-making; eradication of all forms of gender-based violence; elimination of gender stereotypes; and promotion of gender equality in external and development policies. The Commission cannot alone achieve these objectives, as in many areas the centre of gravity for action lies at Member State level. Thus, this Roadmap represents the Commission's commitment to driving the gender equality agenda forward, reinforcing partnership with Member States, and other actors.

Regarding the binding measures implemented in the EU on gender equality after 1995 we can distinguish four directives approved in the 90s and five directives approved since the year 2000 (including the two anti-discrimination directives **2000/43/EC** and **2000/78/EC** which were previously discussed). From 1982 a proposal draft on parental leave for male and female workers was being discussed among several Member States, trade unions and representatives of employers. Finally in 1996 a Directive on this issue was formally adopted (**Directive 96/34/EC**). Comparing this law with the national standards we can see that the directive only reflects the minimum common denominator. There is no obligation to provide paid leave and its minimum length is only 3 months. None of the actors involved in the discussions, that is social partners such as UNICE, CEEP and the ETUC, were particularly interested in changing gender roles (Van der Vleuten 2007: 231). As a result, the initial potential of the directive for transforming gender roles and promoting the feminist goal of sharing family responsibilities between genders was not reached. Still, Directive 96/34/EC introduces the individual right to paternity leave (through parental leave) that is a first step towards a greater commitment on the part of men in sharing child care with women.

**Directive 96/97/EC** amends Directive 86/378/EEC on the implementation of the principle of equal treatment for men and women in occupational social security schemes.

**Directive 97/80/EC** on the burden of proof in cases of discrimination based on sex is another example that shows the contentious relationship between the Commission and Member States when proposals are costly for the latter (Van der Vleuten 2007). The Commission's original proposal was finally watered-down: the definition of indirect discrimination was weakened deleting all references to family status and social protection.

**Directive 97/81/EC** on part-time work could have been a great instrument to protect women workers against indirect discrimination. But again the law was watered down. After tough negotiations, security provisions issues were eliminated as well as other flexible forms of work.

Once again for this directive, it was trade unions and employers who achieved an agreement because, due to several blockages in the procedure, the Commission had to reintroduce the proposal under the Social Protocol Procedure. The care-work issue, a highly important one for gender equality, was particularly at stake in this directive. As it is known, in the EU there are a higher number of part-time women workers than men. Most of the time, women have to combine household tasks and work, due to the fact that care work responsibilities are not shared between the sexes yet. Part-time workers suffer a higher discrimination than full-time workers, which is why this directive could have improved the situation of many women workers. However, the actors involved in the

social procedure did not especially care for women's interests so they insisted in maintaining care as a private issue, which ultimately means that it is women's responsibility.

Kalanke<sup>3</sup> and Marshall<sup>4</sup> ECJ Cases showed us how **Directive 76/207/EEC** was not clear enough in ruling equal treatment between men and women. The Directive was therefore replaced by **Directive 2002/73/EC**, which Member States were required to transpose in their national legislation by October 2005. Thus, the concept of discrimination was defined and the different forms of positive actions allowed by the Court were clarified. Negotiation was fierce but finally the law reached important goals for gender equality (Van der Vleuten 2007). For the first time there was an explicit recognition of sexual harassment as a type of sex discrimination, providing an essential legal support for women. Member States are obliged to create specific equal opportunity bodies to ensure compliance with European Equality Legislation. Protection of pregnant women and maternity leave were also strengthened including the right to return to the same or equivalent job at the end of the maternity leave, which was not done in Directive 92/85.

The proposal on Equal Treatment in the access to and the supply of goods and services has also been hard to approve. Extending the scope of the fight against gender discrimination beyond employment has not been easy; **Directive 2004/113/EC** opens up some possibilities for tackling sex discrimination outside the workplace but has had modest outcomes. It was limited to good and services, whereas education, media, advertising and taxation remained outside the scope of the directive. Member States are required to transpose it in national legislation by December 2007.

From 2004 to the current time (2007) we can find just one more directive on equal treatment between genders. **Directive 2006/54/EC** of the EP 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, and equal pay. Codifying elements of the Court's case law, it is a recast directive measure that proposes to achieve the European objective of gender equality. Regarding this aim and the fight against discrimination, the directive sets out several provisions in the field of pay, social security schemes, sexual harassment and positive actions.

In addition, we need to briefly mention the articles on gender equality and non discrimination that were included in the 2004 Constitutional Treaty. The Charter of Fundamental Rights that is incorporated in the Constitutional Treaty includes equality as a Union value (Article I-2) and refers to equality between women and men and non-discrimination on grounds of sex respectively in Article II-83 and II-81.1. 'Equality between women and men' is defined among the objectives of the Union in Article I-3. Apart from that, the *acquis communautaire* on gender equality was preserved as it is in the Constitutional Treaty, with the addition of Article III-118, a non-discrimination clause on several grounds that applies to the policies of the third part of the Constitution (Lombardo 2007). This means that Article 141 EC on equal pay for equal work has been reproduced as it is in Article III-214 of the Constitution, Article 13 TEU has been renamed as Article III-124 TCE, and Article 3.2 on gender mainstreaming is now part of the clauses of general application as Article III-116. As a result, mainstreaming will cover all policy areas of part III of the Constitution including Common Foreign and Security Policy and Justice and Home Affairs. A new general clause III-115 claims that in the

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<sup>3</sup> Sentence C-450/93 *Eckhard Kalanke v. Freie Hansestadt Bremen* (1995) Rec., p.I-1995.

<sup>4</sup> Sentence C-409/95 *Hellmut Marchall v. Land Nordrhein-Westfalen* (1997) Rec., p.I-6363.

policies included in section III, the EU will take into account the objectives of the Union, equality and non discrimination among them (Lombardo 2007).

Finally, it is worth mentioning the current connections between gender inequality and other social inequalities in the field of the European law. As noted above, different aspects of inequalities apart of gender have been addressed in the EU under the subject of antidiscrimination (Article 13 Treaty of Amsterdam and Article 21 Charter of Fundamental Rights<sup>5</sup>). Nevertheless, ethnicity together with gender is the major subject on which discrimination is treated as illegal. Thus, the major intersection of inequalities at the European level could be found between gender and ethnic and racial origin. In this sense, competition among inequalities could be noted. This new trend is reflected in the European institutional structure. Specialised bodies to promote equality law, particularly in gender and ethnicity, have been established in recent years in the European machinery. Inside the European Commission, under the DG "Employment, Social Affairs and Equal Opportunities" several bodies which deal with inequalities work separately and have specific tasks. The Committee on Women's Rights and Gender Equality of the European Parliament also tries to promote gender equality in connection to other fields of inequality, although it does not have a specific task on addressing intersectionality.

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<sup>5</sup> Although these grounds have not been incorporated into the EU antidiscrimination law yet (social origin, genetic features, language, political opinion, membership of a national minority, property and birth), we should take them into consideration regarding the rising European intersectional perspective.



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## 1.2 History of Equality Machinery

The main agency for women's policy in the EU is the Gender Equality Unit within the Directorate-General Employment and Social Affairs of the European Commission. The other key policy actor in the EU equality network is the European Parliament's Committee on Women's Rights and Gender Equality. Several other EU institutional bodies on equality that play a role in the policy arena have emerged in recent years. In particular a range of agencies have been established in the Commission to implement gender mainstreaming (High level commissioners' groups, expert networks) and anti-discrimination policies. Interacting with the main institutions responsible for gender equality are a number of European level NGOs (e.g. among others the European Women's Lobby, EWLA, Women Against Violence Europe) that participate in different ways in the policy debates on gender equality in the EU. Below we schematically describe the main EU institutional bodies working on equality within the European Commission and Parliament and their main competences and characteristics.

### I- European Commission

Inside the European Commission Institution we can find several bodies which deal with gender equality, gender mainstreaming and anti-discrimination policies. All of them are integrated in the DG "Employment, Social Affairs and Equal Opportunities" although they work separately and have specific tasks. The main Units within the DG working on gender+ equality are: G1 on Equality between Men/Women, G2 on Equality, Action against discrimination: Legal questions, G3 on Integration of People with Disabilities, and G4 on Action against Discrimination, Civil Society.

Within the Commission the following three equality bodies are worth noting:

- 1) The Principal Advisor of the President's Team, which has the areas of competence of employment, social affairs and equal opportunities.
- 2) The Bureau of European Policy Advisers (BEPA), which also acts under the authority of the President and formulates recommendations on issues regarding the policy of the EU.
- 3) Advisor for Gender Issues, Fundamental Rights, Employment and Social Policies.

Below are a number of groups and committee that also work on gender equality within the Commission:

#### **A). *Group of Commissioners of Fundamental Rights, Non-Discrimination and Equal Opportunities***

This Group was created in 2005 and its mandate is to drive policy and ensure the coherence of Commission action in the areas of fundamental rights, anti-discrimination, equal opportunities and the social integration of minority groups, and to ensure that gender equality is taken into account in Community policies and actions, in accordance with Article 3.2 of the Treaty of Amsterdam.

Its composition is formed by President of the Commission (Chair) and the following Commissioners:

- Commissioner for Justice, Freedom and Security;
- Commissioner for Institutional Relations and Communication Strategy;
- Commissioner for Administrative Affairs, Audit and Anti-Fraud;

- Commissioner for Information Society and Media;
- Commissioner for Education, Training, Culture and Youth;
- Commissioner for Enlargement;
- Commissioner for Development and Humanitarian Aid;
- Commissioner for External Relations and European Neighbourhood Policy;
- Commissioner for Employment, Social Affairs and Equal Opportunities.

**B). *Inter-service Group on gender equality***

The goal of this Group (created in 1996) is to develop a gender mainstreaming approach in all EC policies and programmes and to contribute to and co-ordinate activities in the framework of the annual work programme on gender equality prepared by the Commission services.

It is composed of representatives of all Commission services responsible for gender equality in all Directorate Generals and by the DG Employment, Social Affairs and Equal Opportunities.

**C). *Advisory Committee on equal opportunities for women and men***

The year of creation of the Committee is 1981 and its mandate is to assist the Commission in formulating and implementing the Community's activities aimed at promoting equal opportunities for women and men, and to foster ongoing exchanges of relevant experience, policies and practices between the Member States and the various parties involved.

It is formed by the following members:

- one representative per Member State from ministries or government departments responsible for promoting equal opportunities;
- one representative per Member State from national committees or bodies having specific responsibility for equal opportunities between women and men;
- five members representing employers' organizations at the Community level;
- five members representing workers' organizations at the Community level.
- two representatives of the European Women's Lobby to attend meetings of the Committee as observers.

Representatives of international and professional organizations and other associations making duly substantiated requests to the Commission may be given observer status.

**D). *High Level Group on gender mainstreaming***

This group was created in 2001. Its main objective is to support presidencies in identifying policy areas and topics relevant to address during presidencies in order to achieve gender equality. The Group is also the main forum for planning the strategic follow-up of the Beijing Platform for Action, including the development of indicators. Since 2003 the Group has also assisted the Commission in the preparation of the Report on Equality between women and men to the European Council.

The Group is composed of high level representatives responsible for gender mainstreaming at national level.

**E). *High Level Group on gender mainstreaming in the Structural Funds***

The year of creation of the Group is 2004 and it was conceived to act as a network to give input on gender mainstreaming to the authorities managing Structural Funds implementation. It is also a forum to exchange best practice and experience of implementing gender mainstreaming in the structural funds at the national level. It can also provide input into the discussion on the future of the structural funds.

Note: Its mandate expires at the end of 2006 but the Commission and Member States can decide to continue its works after this date.

In addition to high level representatives responsible for Structural Funds at a national level in the Member States it is also formed by candidate countries as observers.

#### **F). *European Institute for Gender Equality***

Its creation was approved in December 2006. The Institute shall be operational as soon as possible and in any case not later than 19 January 2008. It will be located in Vilnius, Lithuania. Its mandate is: to ensure the collection and analysis of objective, reliable and comparable information and data at the community level; the development of appropriate methodological tools in particular for the integration of the gender dimension in all policy areas; and facilitate the exchange of best practices, the dialogue among stakeholders and raise awareness among EU citizens.

The Institute is composed by a Director, a Management Board and several Experts' Forums.

## **II- European Parliament**

The main body in the European Parliament that deals with gender equality issues is the Committee on Women's Rights and Gender Equality. The other two Parliament bodies complement the work of the Committee: the EP High-level Group on Gender Equality and the Network of Parliamentary Committees for Equal Opportunities for Women and Men in the European Union.

- *Committee on Women's Rights and Gender Equality (FEMM, European Parliament)*

In 1984 the European Parliament inaugurated the Women's Rights Committee now called the Committee on Women's Rights and Gender Equality. One of its primary functions is to check whether forthcoming legislation affects the rights of women. Therefore, the Committee usually gives an opinion on most proposals for legislation on grounds where women's rights could be addressed, namely, health, industry and the internal market.

The Committee's main responsibilities are:

1. The definition, promotion and protection of women's rights in the Union and related Community measures;
2. The promotion of women's rights in third countries;
3. Equal opportunities policy, including equality between men and women with regard to labour market opportunities and treatment at work;
4. The removal of all forms of discrimination based on sex;
5. The implementation and further development of gender mainstreaming in all policy sectors;
6. The follow-up and implementation of international agreements and conventions involving the rights of women; Information policy on women.

Inside this Committee we can distinguish, at the same time, two more institutions:

- a) EP High-level Group on Gender Equality: This group was created in 2004 with the aim of enhancing the EP commitment to fundamental rights and equality. The most important task

of this group is to ensure that the EP takes into account the issues of gender mainstreaming and equal opportunities in all the policy areas which are debated in its committee. Therefore the group will monitor gender mainstreaming throughout EP activities: committee work, information and communication policy and other areas. The Group is formed by the President of the EP, selected Vice-Presidents as well as the chair of the Conference of Committee Chairmen and the Chair of Committee of Women's Rights and Equal Opportunities. A Secretary-General of the EP also assists the Group.

- b) NCEO - Network of Parliamentary Committees for Equal Opportunities for Women and Men in the European Union: This "Network" of Parliamentary Committees was created in the light of the Intergovernmental Conference, which led to the Treaty of Maastricht. Its first meeting was on May 1997 as a result of the Senate of Belgium initiative supported by the European Commission. Its main objective is to reinforce specifically the of women and of men to equality in the Treaties of the European Union. The NCEO-Network members are the following: European Parliament, specific committees of the national parliaments of the Member States, specific committees of the national parliaments of the candidate countries and observers (Council of Europe, Nordic Council and Inter-Parliamentary Union).

## **2. Non-employment**

### **2.1 Introduction**

The most controversial debates concerning non-employment during the QUING period have been those on the reconciliation of work and family life, particularly regarding parental leave and part time work, and on tax-benefit policies, with an emphasis on goods and services, social security schemes, and pensions. Equal opportunities and equal treatment and the gender pay gap are more stable issues in the EU gender policy. Other important debates, though with a minor intensity in the production of policy documents, are care work and informal work and access to the labour market.

From the beginning, the EU powers have been mainly restricted to an economic realm, thus the labour market and employment issues have been its principle areas of legislation. Hence, the European employment policies have acted as the main mechanism for achieving equality between women and men in the European Union context, tackling inequalities from an employment perspective. Nevertheless, while some measures have promoted women's equality in the labour market, other measures have had different consequences in reinforcing traditional gender roles and stereotypes (Van Beveren et al.: 2004).

In general, the actors involved in the debates around those subjects are not only the European Commission, the European Parliament (through the Committee on Women's Rights of the EP) and the Council but also the European Trade Unions and Employers' organisations and the European Court of Justice, which has made several decisions in this topic.

For the issue on non-employment we have to take into consideration several Directives as well as some non binding instruments which construct categories of non-employed people in a gendered way. In order to seek these measures and laws in the QUING period with regard to the non-employment subject we have distinguished the following sub issues and topics which will be introduced below:

1. Reconciliation of work and family life
  - Parental leave
  - Part time work
2. Care work and informal work
3. Gender pay gap
4. Tax-Benefit policies
  - Goods and services
  - Social security schemes
  - Pensions
5. Access to the labour market
6. Other: Equal opportunities and equal treatment

#### **1. Reconciliation of work and family life**

From the beginning, reconciliation of family responsibilities with work has been one of the major issues concerning gender inequalities at the European level, though families have not had enough support in this context (as noted, legislation on family matters falls into the powers of the Member States and is not directly under the scope of the European law). Due to economic factors such as

the need for flexibility in the labour market, the need to promote employment, and also due to reasons which deal with equal opportunities, an important debate has surfaced across the EU, positioning the reconciliation of work and family life as an essential pillar of the European Employment Strategy (EES).

The supposed “reconciliation measures” are implemented in order to reach a higher rate of employment, particularly regarding women. Therefore, it’s understandable that they were largely designed for women since women – unlike men- continue to hold primary responsibility for family duties.

Whereas “care work” is articulated as a separate issue (despite being strongly connected to reconciliation topics), parental leave and part-time work are included in this sub issue. Since the 1980’s negotiations on **parental leave** have been put on the agenda. Due to the especially strong resistance from the UK<sup>6</sup>, several national governments of the Member States blocked any agreement to adopt a Directive in this subject. Finally, after attempts to reintroduce the proposal<sup>7</sup>, it was put back onto the agenda under the Social Protocol Procedure. Hence, not only European institutions but also Member States and the European social partners<sup>8</sup> played a decisive role in achieving an agreement on parental leave. The Directive was formally adopted in 1996. The main point in connection with this issue is that family responsibilities were problematized as a result of various social changes, for example certain shifts in demographic patterns. In terms of equal opportunities between women and men it was fundamental to achieve an agreement on parental leave, although traditional gender roles referring to women as chief care-givers were not questioned. In the decade following 1980, another debate relevant to gender equality was introduced: **part-time work**. This is one of the issues in which European policymaking on family matters has been most articulated. As in the case of the parental leave Directive, the Directive on part-time work has been constructed by supranational representatives of employers and trade unions in the social procedure. This measure has been awaiting approval since 1981 due to blockage by several countries<sup>9</sup>. Due to the restrictions on the original Commission proposal, potential costs for more Member States were reduced<sup>10</sup>. After a long wait in 1997 the Directive was finally approved.

These measures are important to emphasize because they represent the main legislation on these topics. Included in the timeline below is also further legislation, both binding and soft law, which has generated debate at the EU level.

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<sup>6</sup> From the beginning of the negotiations in 1982 when the issue of parental leave was put into the agenda, British disagreement blocked any adoption of accord: the British Government wanted to limit the parental leave to mothers. Notwithstanding Britain finally removed its position and also adopted the measure (Council Directive 97/75/EC of 15 December 1997 amending and extending, to the United Kingdom of Great Britain and Northern Ireland, Directive 96/34/EC) which proved costly because of the improvement in the rights of working parents.

<sup>7</sup> The first one was in 1993 when the Belgian Council Presidency put the issue back. The second one was in 1994, under the German Council Presidency.

<sup>8</sup> Union of Industrial Employers’ Confederations of Europe (UNICE), European Centre of Enterprises with Public Participation (CEEP) and the European Trade Union Confederation (ETUC).

<sup>9</sup> As was the case of parental leave, some National Governments made efforts to water down the draft. A number of shifts were introduced to reframe anew the issue.

<sup>10</sup> Differential social security provisions for part-time and full-time workers in Member States constituted the most important source of discrimination but statutory social security matters were eliminated from the proposal. The principle of non-discrimination also was limited as well as the terms in which the Directive should be implemented at national level. Regarding women and the fight against discrimination, those restrictions narrowed the scope of the Directive.

## 2. Care work and informal work

Compared to reconciliation, care work is a minor debate in the EU policy context. Child care, not care for the elderly or the disabled, is the subject that most frequently appears in the debates and measures adopted. Before the QUING period, one soft measure was approved on childcare<sup>11</sup> regarding the fact that a lack of childcare in Member States leads to lack of women's participation in the labour market but also in other areas of society. The EU seems to benefit if more women are active in the labour market. Thus Member States should take steps to improve and provide childcare. We should stress that care related activities, viewed from the perspective of the Economic objectives of the European Community, largely coincide with the reconciliation issue hence why the topic "Care work and informal work" appears in several years in the timeline even if it appears that the documents address the concerns on reconciliation more than care tasks or responsibilities. With specific regard to "informal work", it is worth noting that no documents or references from the European actors have been found, for this reason I have just focused on "care work".

According to the documents selected, families (read women) perform an important function in rearing the next generation and in care-taking roles. However, changes outside the family<sup>12</sup> have direct effects on both its traditional functions and structure and they evoke the need to support and equip women in order to perform their functions and live unhindered in society.

## 3. Gender pay gap

Inequalities between genders in the work force have been one of the major issues on which the EU has legislated and the gender pay gap is one of the main examples in this topic. From the 1970s (Directive 75/117/EEC) until recent years (Directive 2006/54/EC) equal pay has been a recurring topic in the debate to achieve equality in employment. Social partners of the EU as well as the EP Committee on Women's Rights and Gender Equality have played an important role in this debate. Similar to the reconciliation issue, economic reasons represent the biggest motivation in achieving equal pay from most of the actors involved in the debates on this topic. Growth and a competitive economy, the most important goals of the Union, promote the adopted actions and measures on gender pay gap.

## 4. Tax-Benefit policies

Alongside reconciliation, this is the other major debate in the EU. Three main topics have been selected under this issue, namely, goods and services, general social security programs and pensions.

The supply of **goods and services** is considered a part of this sub issue. The proposal on equal treatment in the access to, and the supply of, goods and services has been hard to approve due to the possibility of extending the realm of the fight against gender discrimination beyond employment. Trade Unions, European Institutions and women's organizations took part in a tough debate to extend the grounds in which the Member States should legislate to achieve the goal of equality

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<sup>11</sup> 92/241/EEC: Council recommendation of 31 March 1992 on child care. *Official Journal L 123, 08/05/1992 P. 0016 – 0018.*

<sup>12</sup> Mainly demographic (shrinking working age population, low birth rates, growing population of older people) and societal (more single parent families, smaller families) but also scientific ones (which are not further mentioned).



between women and men. When the Council approved Directive 2004/113/EC, the main document on this subject, possibilities for tackling sex discrimination outside the workplace were opened up but the law has had modest results. It is limited to good and services, whereas other fields, (such education, media, advertising and taxation) areas in which the women's organizations called for legislation, remained outside the scope of the directive.

**Social Security programs** are treated as another topic in the Tax-Benefit sub issue. The actors participating in the debates and adoption of measures on this topic are mostly the same as those involved in the debate on **pensions**. This debate is the most relevant topic running through the documents found on social security programs. More so than in other areas, measures and documents on the pension issue abound, most likely due to current concerns of the sustainability of pension systems and the growing elderly population in Europe along with other reasons. The accelerated demographic of the aged is a challenge to the EU regarding benefit policies as a whole. The difficulties in providing pensions and other benefits have increased and continue to do so in the EU capitalist frame. Looking for a financially sustainable way the European Council has adopted a new framework for the social protection and social inclusion process. The Social Protection Committee<sup>13</sup> has been created to carry out several studies on key issues related to the adequacy and financial sustainability of pension systems.

## **5. Access to the labour market**

With regard to this issue, we should mention that our major attention has been centred on migrant groups. The majority of the documents found concerning access to the labour market are related to immigrant people, although the topic in general has had only minimal weight in the environment of the EU prior to 2002. In recent years, migration flows towards Europe have generated a shift in the attitude towards Community immigration policies. At the same time as borders are strengthened, migrant people become increasingly necessary in our labour market overall, taking into consideration the ageing population in European countries and the social consequences. Consequently, for economic reasons as well as a commitment to human rights and the fight against discrimination, the European Union now pay special attention to the integration of migrant people, especially women, the main subjects of interest in this research. Since 2000 several measures have been approved in the EU on immigration and employment. The period from 2005 until now has seen the largest debates concerning economic migration: the Commission Green Paper of January (COM (2004) 811 final) opened a big debate on this issue.

## **6. Other: Equal opportunities and equal treatment**

Equal opportunities and equal treatment is yet another controversial topic in the context of the EU in which other subjects are involved. This debate is similar to the controversy surrounding "Anti discrimination Policies" in the Intimate Citizenship issue. As a result we have included this topic within the non-employment issue. As previously stated, from its beginnings in 1957 the European Union Gender Policy, despite its progressive evolution towards others equality fields, has been mainly based on the concept of equal opportunities and equal treatment in employment and the labour market. The introduction of Article 141 of the treaty of Amsterdam (ex 119) setting the legal

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<sup>13</sup> It was established in 2000 by a Council Decision (2000/436/EC) in order to serve as a vehicle for cooperative exchange between the European Commission and the Member States of the EU about modernising and improving social protection systems.

basis for EU legislation on equality between men and women also enables the Community to approve further Directives on the issue.

## 2.2 Actors

The main actors involved in the debates about the “non-employment” issue can be distinguished on three key grounds: European Union Institutions, European Civil Society organizations and European Trade Unions. Following the list, a short narrative provides some information of the actors’ particular involvement. Some more details of its particular implications in the debates will be provided in the timeline.

### 1. European Union

- European Parliament.
- Committee on Women's Rights and Gender Equality (EP).
- European Commission.
- European Council.
- Court of Justice of the European Community (CJEC).
- European Economic and Social Committee (EESC).
- Employment Committee.
- Economic Policy Committee (EPC).
- Social Protection Committee (SPC).
- European Foundation for the improvement of living and working conditions (Eurofound).
- EC's Expert Group on Gender and Employment (EGGE).

### 2. European civil society

- European Women’s Lobby (EWL).
- Social Platform.
- European Anti-Poverty Network (EAPN).
- European Platform for Migrant Workers’ Rights.
- Platform for International Cooperation on undocumented migrants (PICUM).
- European Social Insurance Platform (ESIP)<sup>14</sup>.

### 3. Trade Unions

- European Trade Unions Confederation (ETUC).
- Union of Industrial and Employers’ Confederations of Europe / BusinessEurope
- European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest (CEEP).

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<sup>14</sup> As far as we could ascertain, the ESIP, representing the social insurers of over thirty organisations from eleven Members States and Switzerland, active in the field of health insurance, pensions, family benefits, occupational safety and accident insurance and unemployment insurance, has not played a role in the debates on tax-benefit policies but on reconciliation. We should mention, nevertheless, that their role has not been particularly remarkable.

## 1. Actors: Reconciliation

Several actors have been involved in the debate on this topic: from European institutions such as the EP Committee on Women's Rights, the Commission or the Employment Committee<sup>15</sup>, and the European Foundation for the improvement of living and working conditions<sup>16</sup>, to social partners and other experts, such the European Expert Group on Gender and Employment<sup>17</sup>. It is also worth noting the European civil society organizations' involvement with the Social Platform<sup>18</sup> which will be addressed in the timeline. While actors such as the EP Committee on Women's Rights and Equal Opportunities often pushed for reconciliation measures on the basis of gender equality considerations, a number of other actors (e.g. social partners) pressured to tackle the measures on reconciliation (parental leave, part-time work, care tasks also) and were not particularly motivated to change gender roles, thus actions and opinions on reconciliation tended to be focussed solely on women and not on both genders. This was mainly due to economic reasons, as growth and a competitive economy are the most important goals of the EU. Furthermore, particularly since the launch of the European Employment Strategy and the revised Lisbon Strategy<sup>19</sup>, these goals were strongly reinforced by means of developing market related measures, in which we can emphasize those of reconciliation.

## 2. Actors: Care work

This subject has not generated a debate as large as that on reconciliation, probably because it is still addressed as a private matter. Actors in this field include several European Institutions such as the EP, the Council and the Committee on Women's Rights and Gender Equality. Also, the Social Protection Committee and the Economic Policy Committee have participated in the debates on care work, and have established as their main goals the improvement of economic growth and social protection systems. From European civil organizations, the EWL's<sup>20</sup> involvement in the debates on care issues is also worth noting.

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<sup>15</sup> Replacing the Employment and Labour Market Committee created in 1997, it is an advisory committee set up to implement the European Employment Strategy and to promote coordination between Member States on employment and labour market policies (Council Decision 98/2000/EC).

<sup>16</sup> It was set up in 1975 by the European Council (Regulation 1365/75), to contribute to the planning and design of better living and working conditions in Europe. Its main role is to provide information, advice and expertise on living and working conditions, industrial relations and managing change in Europe, for key actors in the field of EU social policy.

<sup>17</sup> This network comprises different national experts in the fields of employment, social inclusion and gender equality issues; therefore it is worth noting its participation in the debates around the subissues we are addressing. Its main function is to undertake an annual programme of policy-oriented research and it also reports to the European Commission Unit "Equality between men and women" of the directorate-general for Employment, Social Affairs and Equal opportunities.

<sup>18</sup> The Platform of European Social NGOs was established in 1995 by a grant of the European Commission. It brings together more than 40 European non-governmental organisations, federations and networks active in the social sector. The Social Platform and its members are committed to the advancement of the principles of equality, solidarity, non discrimination and the promotion and respect of fundamental rights for all within the European Union.

<sup>19</sup> During the meeting of the European Council in Lisbon in March 2000, the Heads of State or Government launched the "Lisbon Strategy" which was aimed to succeed the objective of making Europe the most competitive economy in the world and achieving full employment by 2010. In 2005 The Strategy was revised in order to focus more closely on developing strong growth and creating more and better jobs.

<sup>20</sup> Established in 1990, the European Women's Lobby is the largest and probably most influential European Women's NGO in the European context.

### **3. Actors: Gender pay gap**

Regarding inequalities between genders in employment, this topic is the one on which the EU has generated several legislative measures. Thus, European institutions such as the EP Committee on Women's Rights and Gender Equality and the Commission are the main actors involved in the debates. However, trade unions and employers' organizations have also played a role in the debate.

### **4. Actors: Tax-benefit policies**

Together with reconciliation, this topic has generated the other major debate in the EU context. European Institutions (European Parliament, The Council and the Commission, the Committee on Women's Rights, the Court of Justice), and trade unions (such as UNICE) were the leaders in the debates. Special attention might be paid to pensions, the most relevant topic running through tax-benefit policies. We can distinguish among the institutional actors participating in the debate, the aforementioned Committee as well as other European Institutions such the Commission and the Council, the EP Committee on Women's Rights, the Court of Justice and the Economic Policy Committee<sup>21</sup>. UNICE as a trade union organization has also played a significant role in the debate. Finally, from the civil society we could mention, for instance, the European Antipoverty Network (EAPN)<sup>22</sup>.

### **5. Actors: Access to the labour market**

The most significant actors involved in the debates on access to the labour market and economic migration are the following: from the EU machinery, the European Economic and Social Committee and the main European Institutions such the Commission and the Parliament and the Expert Group on Trafficking in human beings. From civil society we can distinguish the Social Platform, some civil organizations such PICUM<sup>23</sup>, the EAPN and the European Platform for Migrant Workers' Rights. Trade Unions have not had a significant role in the debates on this topic yet.

### **6. Actors: Equal opportunities and equal treatment**

Actors involved in the debates on equal opportunities include: European Institutions such as the European Commission (Unit on Gender Equality) and Parliament (Committee of Women's Rights of the European Parliament), and Trade Unions (ETUC, UNICE, CEEP) as well as Member States, who took part in the creation of several measures on the subject. The European Court of Justice has also had an important role in this debate, approving several sentences on equal treatment.

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<sup>21</sup> It was set up by a Council Decision in 1974 (74/122/EEC) to contribute to the preparation of the work of the Council in co-ordinating the economic policies of the Member States and the Community. According to its statutes, the Committee is asked to focus on structural policies for improving growth potential and employment in the Community in line with the Lisbon strategy.

<sup>22</sup> This is a representative network of non-governmental organisations (NGOs) and groups supported by the commission and involved in the fight against poverty and social exclusion in the Member States of the European Union.

<sup>23</sup> The Platform for International Cooperation on Undocumented Migrants aims at promoting respect for the human rights of undocumented migrants within Europe.

## 2.3 General Timeline

1995

### 3. Gender pay gap

The Commission memorandum on equal pay for work of equal value ((COM (94) 6 final) of June 1994 was welcomed by the E Parliament's CWR. In its report, the Committee called on the Commission to make a Directive implementing affirmative action for women on this topic. At the same time, it also called on the Member States and trade unions to gather information on pay and segregation at the workplace. Thus, from the CWR perspective, it would become easier to fight against gender pay gap.

### 4. Tax-benefit policies

Under Article 4(1) of Directive 79/7/EEC the European Court of Justice ruled in favour of Mrs Nolte and against the German law of social insurance<sup>24</sup>, which excluded part-time employees from the statutory old-age insurance. It could be considered sex discrimination because of the considerably disproportionate ratio of women to men who work part-time. Despite its connection to equal treatment, we have treated this legislation as part of this topic on tax-benefit policies. As will happen on other occasions, some issues overlap.

### 6. Equal opportunities and equal treatment

Three more European Court of Justice rulings were approved in 1995 in favour of equal treatment between sexes<sup>25</sup>. Directives 79/7/EEC and 76/207/EEC were called by the Court. It is worth highlighting the Kalanke judgement (C-450/93) regarding the affirmative actions to which it refers (for the first time, the European Court of Justice condemn the main priority of female preference held by the Länder Law in areas where women were underrepresented).

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1996

### 1. Reconciliation of work and family life

Since 1982 a proposal draft on parental leave for male and female workers had been discussed among several Member States, trade unions and representatives of employers. Finally in 1996

<sup>24</sup> Nolte v Landesversicherungsanstalt Hannover , CJEC case of 14 December 1995 (C-317/93).

<sup>25</sup> Jennifer Meyers v Adjudication Officer, CJEC case of 13 July 1995, (C-116/94); Eckhard Kalanke v. Freie Hansestadt Bremem, CJEC case of 17 October 1995, (C-450/93); The Queen v Secretary of State for Health, ex parte Cyril Richardson, CJEC case of 19 October 1995, (C-137/94).

Directive 96/34/EC was formally adopted. This Directive introduced the individual right to paternity leave (which can be seen as a first step towards sharing family responsibilities between the sexes). The main actors involved in the elaboration and discussion of the directive were the social partners such as ETUC, UNICE and CEEP.

### 3. Gender pay gap

The principle of equal pay between sexes for equal work is based on two fundamental measures: Article 119 of the Treaty of Rome (Article 141 ToA) and Directive 75/117/EEC of February 1975. However, despite these provisions, the European Community realised the existence of further discrimination against women on this topic. Following its memorandum on equal pay for work of equal value (COM (94) 6 final) of June 1994, a code of practice on the implementation of equal pay for work of equal value for women and men was approved providing “concrete advice” to ensure that the principle of equality between women and men performing work of equal value is applied to all aspects of pay.

### 4. Tax-benefit policies

Regarding to social security programs, 1996 is an important year in terms of approved measures. Directive 96/71/EC 1996 on the position of workers in the framework of the provision of services and Directive 96/97/EC amending Directive 86/378/EEC on occupational social security programs were approved. The Committee on Women's Rights and the actions of the European Court of Justice<sup>26</sup> played an important role in the implementation of the two Directives, both essential jurisdictions concerning equal treatment on social security issues.

### 6. Equal opportunities and equal treatment

The European Court of Justice again played a fundamental role in achieving equal treatment between sexes. Three cases of indirect discrimination against female workers<sup>27</sup> were presented to the Court this year.

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<sup>26</sup> Y.M. Posthuma van Damme v Bestuur van de Bedrijfsvereniging voor Detailhandel, CJEC case of 1 February 1996, (C-280/94); Francina Johanna Maria Dietz v Stichting Thuiszorg Rotterdam, CJEC case of 24 October 1996, (C-435/93).

<sup>27</sup> Edith Freers and Hannelore Speckmann v Deutsche Bundespost, CJEC case of 7 March 1996, (C-278/93); C.B. Laperre v Bestuurcommissie beroepzaken in provincie Zuid-Holland, CJEC case of 8 February 1996, (C-8/94) and Kuratorium für Dialyse und Nierentransplantation e. V. v Johanna Lewark, CJEC case of 6 February 1996, (C-457/93).

<sup>28</sup> Also see Council Directive 97/75/EC of 15 December 1997 amending and extending, to the United Kingdom of Great Britain and Northern Ireland, Directive 96/34/EC.

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**1997**

#### 1. Reconciliation of work and family life

After several blockages from the Member States in the procedure to approve Directive 97/81/EC on part-time work, the Commission had to introduce this proposal under the Social Protocol Procedure. Hence, as with Directive 96/34/EC, trade unions and employers managed to achieve a final agreement (ETUC, CEEP, UNICE). This Directive could have been a great instrument to protect female workers against indirect discrimination but the law was watered down after the debates surrounding the agreement. It is worth mentioning that the care-work issue in particular is at stake in this measure with regard to the higher number of part-time women workers than men, exemplifying once more that different issues can overlap. Nevertheless, as stated above, the actors involved in the social procedure did not especially care for women's interests and insisted on maintaining care as a private issue, away from the scope of this directive. In addition to this, the European Employment Strategy launched in 1997 specifically mentioned that social policies must pay greater attention to the matter of reconciling work and private life.

#### 6. Equal opportunities and equal treatment

The year in which the Treaty of Amsterdam was approved (we should emphasize Article 13 describing different grounds to combat discrimination), the Council Directive on the burden of proof in cases of discrimination based on sex was also approved. Apart from the Commission, the CWR of the European Parliament was the main actor involved in the 1997 debate on the measure that pushed for a more precise definition of indirect discrimination. Meanwhile, with regard to tackling unemployment, the European Council held an exchange of views with the European Parliament during 1997 from which the outcome was the extraordinary European Council meeting on employment in November. Included in its general approach, several subjects of equal opportunities between sexes were addressed: gender gaps and reconciliation of work and family responsibilities. Likewise, two more sentences of the European Court of Justice were approved concerning equal

treatment between women and men<sup>29</sup>. Also worth highlighting is the European Parliament resolution on the situation of assisting spouses of the self-employed since it focuses attention on the unrecognised work of women in assisting their spouses.

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**1998**

### 2. Care work and informal work

Through its report on single parent families, the EP Committee on Women's Rights called on authorities to identify and combat the discrimination against single-parents in society. Taking into consideration that between 80-90% of single-parents are women, the Committee on Women's Rights, as a main actor defending women's interests, stressed the importance of helping these families.

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<sup>29</sup> Hellmut Marschall v. Land Nordrhein-Westfalen, CJEC case of 11 November 1997, (C-409/95) and Hellen Gerster v Freistaat Bayern, CJEC case of 2 October 1997, (C-1/95).

<sup>30</sup> This Directive was extended into Council Directive 98/23/EC to the UK and Northern Ireland.



## 6. Equal opportunities and equal treatment

Equal treatment was once again brought about by the European Court of Justice. In the Thibault case<sup>31</sup> Directive 76/207/EEC was called against French federal law which deprives a woman of the right to maternity leave. As Masselot points out, the European Court of Justice's case law "acknowledges that the protection of pregnancy/maternity aims at promoting substantive gender equality" (2007: 164).

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1999

## 6. Equal opportunities and equal treatment

The Framework Agreement on fixed-term work concluded by the European social partners (ETUC, UNICE and CEEP) in March 1999 led to a second<sup>32</sup> Directive specifically concerned with fixed-term work (1999/70/EC). This agreement can contribute to improving equality of opportunities between women and men given that more than half of fixed-term workers throughout the EU are women. Furthermore, the European Parliament CWR Working Paper, under a wide definition of atypical work (which involves family work, self-employment, tele-work, homework, casual work, seasonal work, temporary work and part-time work) aims to gain insight on the nature and extent of discrimination against atypical workers in the EU Member States, especially women who are over-represented in some of the states. The formal position of atypical workers, both male and female, is analyzed vis-à-vis the position of the 'typical' employee, and differences between these positions are assessed not only in terms of the nature of these differences but also in the extent to which these differences may result in (indirect) discrimination against women.

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<sup>31</sup> - Caisse nationale d'assurance vieillesse des travailleurs salariés (CNAVTS) v Evelyne Thibault, CJEC case of 30 April 1998, (C- 136/95).

<sup>32</sup> The first was Council Directive 91/383/EC of 25 June 1991 supplementing the measures to encourage improvements in the safety and health of workers with a fixed-duration employment relationship or a temporary employment relationship.

2000

### 1. Reconciliation of work and family life

In June of this year the Council and the Ministers for Employment and Social Policy published a Report on the balanced participation of women and men in family and working life. One of its paragraphs emphasizes the importance of protecting both male and female workers exercising rights relating to paternity, maternity, or to the reconciling of working and family life. Member States, which might participate in the debates on reconciliation, are also encouraged to reinforce measures that support a balance between working men and women and of the care of the dependent. Likewise, states should reinforce measures to encourage further development of supportive services for families. Similarly, the Charter of Fundamental Rights of 2000 specifically defends in Article II-93.2 the sharing of work and family responsibilities between the sexes. The Lisbon Strategy launched in March also paid concrete attention to social policies focusing on reconciliation of work and family life.

### 3. Gender pay gap

The Charter of Fundamental Rights in its Article III-214 defends equal pay for equal work.

### 4. Tax-benefit policies

The conclusions of the Lisbon European Council of March 2000 established that, on the basis of a sustainable economic growth of 3%, Member States should move towards a total average employment rate of 70%, and over 60% for women, in 2010. This growth in employment has a crucial role to play in ensuring the sustainability of pension systems. In this sense, women's participation is clearly one key issue. In her speech, Anna Diamantopoulou, as representative actor on behalf of the European Commission, contends that the European social model is not an anachronism as some detractors have stated, but central to the ability to manage change "as countries, companies, employees and citizens". Finally, two more cases underlined the European Court position in the defence of equal treatment between sexes in the access to social security schemes<sup>33</sup>.

### 6. Equal opportunities and equal treatment

Regarding equal treatment, the European Court of Justice analysed the case Georg Badeck and Others<sup>34</sup> to determine whether the Law of the German Land of Hesse allows equal rights for women and men and if the removal of discrimination against women in the public service is compatible with Directive 76/207/EEC (amended by Directive 2002/73). Based on Article 13 EC, the Council Directive 2000/78/EC established a general framework for equal treatment in employment and occupation. It has been selected for inclusion in this issue as well as in that of intimate citizenship.

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<sup>33</sup> Deutsche Telekom AG v Lilli Schröder, CJEC case of 10 February 2000, (C-50/96) and Deutsche Post AG v Elisabeth Sievers and Brunhilde Schrage, CJEC case of 10 February 2000, (C-270/97 and C-271/97)

<sup>34</sup> Georg Badeck and Others, CJEC case of 28 March 2000, (C-158/97).

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## 2001

### 4. Tax-benefit policies

2001 is not a year with big debates or documents published. We think, nonetheless, that it is worth noting the seminar organised by the EAPN's Women and Poverty Working Group to examine the extent to which women are invisible in social policies and are negatively affected by changes in social welfare systems.

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## 2002

### 1. Reconciliation of work and family life

Both the Lisbon strategy and the EES state that social policies must pay greater attention to the matter of reconciling work and private life. In responding to the current social challenges, the Employment Strategy (1997) has the leading role in the establishment and coordination of the employment policy priorities to which Member States should subscribe. Among the priorities identified, reconciling work and private life is at the heart of a process of reform of European labour

markets. The joint Opinion of the Economic Policy Committee and the Employment Committee on the future direction of the European Employment Strategy emphasizes this as well. Policies on reconciling work and family life are also called for in Lisa Pavan-Woolfe's speech. In her view as representative voice of the Gender Equality Union of the EC, better policies on this issue are crucial in any effort to boost employment levels in Europe and to promote equal opportunities for women and men.

## 2. Care work and informal work

We can distinguish two speeches regarding care work issue in 2002, both held at EU Conference on care services for children and other dependant people in Denmark. In these speeches the participants stressed how reconciliation of work and family life, paying special attention to care responsibilities, has become a cornerstone of the Member States policies regarding the Lisbon target of getting 60 % of women into employment by 2010 in the EU. With some references to Directive 76/207 on equal treatment of men and women in employment and occupation, the *H. Lommers v Minister van Landbouw, Natuurbeheer en Visserij* judgement can serve as an example of how the Court of Justice focuses on the observance of proportionality principle as the key element for the validation of affirmative action measures relating to equality between women and men.

## 5. Access to labour market and employment

It is known that discrimination against women is more acute than that against men. Hence, the social integration of immigrant women presents specific features which must be taken into account such as their greater difficulty in gaining access to employment, training, or in making use of public services. Thus, the European Economic and Social Committee states the role of women's organisations in promoting women's rights, outlined in the booklet listed below.

## 6. Equal opportunities and equal treatment

Before 2002, Directive 76/207 EEC was the principle ruling on equal treatment of men and women regarding access to employment, vocational training and promotion, and working conditions. In September 2002 it was amended by Directive 2002/73 EC, updating and clarifying the provisions on gender equality<sup>35</sup>.

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<sup>35</sup> This Directive is addressed in the gender based violence issue because of the introduction of the concept of sexual harassment as a concrete form of discrimination in violation of the equal treatment principle.

opportunities in the European Employment Strategy process. Elsinore, Denmark, 25 & 26 November. PDF file, 5 pp,

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## 2003

### 4. Tax-benefit policies

At the Laeken European Council in December 2001, it was agreed that Member States would submit reports to the Commission in which they present the future of their pensions system. These “national strategy reports” were submitted to the Commission in September 2002 and addressed 11 EU objectives previously agreed upon relating to pension systems and within these, and also in connection to the QUING project, we highlight the aspirations for greater equality of women and men. The Joint report by the Commission and the Council of 2003 on adequate and sustainable pensions notes that women represent the majority of elderly people. Due to their lower labour force participation and earnings, women have significantly lower individual pension entitlements than men. While the priority should be to raise women's individual pension rights through increased labour market participation and closing the earnings gap between women and men, it is clear from the national strategy reports that it will remain necessary, for a long time to come, to improve the income situation of older women through pension entitlements awarded for child rearing periods and through derived benefits (survivors' pensions). Together with the Member States and the Commission and European Council, other actors took part in the debate on pensions in 2003. The European Parliament as well as the EESC and the CoR had a certain role on this topic. These institutions received the Communication from the Commission on modernising social protection with the intent of addressing the key challenge of promoting more effective work incentives in social protection systems. One year later, the EESC published its opinion on the Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on Modernising social protection for more and better jobs in terms of greater quantity and of higher quality.

### 5. Access to labour market and employment

Due to the current migration flows to Europe, the European Institutions have taken into consideration the importance of migration in the European labour markets. Through the so-called integration measures, they are trying to increase employment and economic growth as well as achieve the

necessary social cohesion by including several measures under the principles of the Lisbon strategy and the European Employment Strategy. The Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions of June 2003 on immigration, integration and employment follows these aims of economic efficiency and social cohesion. Both the EESC (opinion of December 2003) and the CoR (opinion of April 2004) welcomed the Commission communication on the initiatives on the integration of immigrants, and paid special attention to the needs of women who are faced with potential double discrimination.

## 6. Equal opportunities and equal treatment

As previously stated, equal treatment between women and men is one of the main topics addressed in the EU. The speech of Luisa Pavan-Woolfe, as Director of Horizontal and International Affairs of the European Commission, shows that one of the major challenges remaining with regard to European labour is women's lagging participation. Looking at the Lisbon target of incorporating 60% of women into the work force by 2010, she insists that there is still much to do, not only in the workplace but in all spheres of society: caring activities, for instance, have a strong impact on women's job prospects but they have little effect on men's. In addition, through its report on equal social policy, the Commission demonstrates the formal European goals of consolidating equal opportunities in different aspects of society in order to promote economic efficiency and prevent social exclusion. Two other documents of 2003 we might mention regarding equal treatment between women and men are: the European Commission Options Papers on the simplification and improvement of legislation on and equal treatment between men and women; and the UNICE reply to this document. The objective of simplifying and improving the legislative environment on this topic is welcomed by UNICE but it considers, nevertheless, that further modifications of existing legislation on promoting gender equality should not be taken.

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**2004**

#### **1. Reconciliation of work and family life**

As previously stated in the introduction to this issue, parental leave and part-time work are the main topics addressed by the EU in dealing with reconciliation of work and family life. The Eurobarometer published in May 2004 by the European Opinion Research Group exemplifies the European (European Union (EU-15)) male’s attitude towards parental leave concerning a series of issues related to this subject under the 1996 Directive on parental leave. The expert’s paper on the determinants of part-time work in the EU countries focussed specifically on female participation in the labour market and concluded that part-time employment is traditionally the primary way of integrating women into the labour market. The CWR launched an initiative on the reconciling of professional, family and private lives (which are included in the Member State’s competence) to promote family policies concerning female participation in the labour market. And, finally, the European Anti Poverty Network (EAPN) published a report on various social aspects of the European Employment Strategy affecting women.

#### **2. Care work and informal work**

Balancing caring activities is one of the major challenges in reconciling of work and family life. In the Lisa Pavan-Woolfe speech on childcare, caring responsibilities are considered fundamental in the reconciliation of work and family life for both women and men, and therefore for gender equality. Thus, these two topics, care work and informal work, clearly overlap. The connection can also be seen in the European Commission Childcare Network Papers produced in the 1990s but published in 2004. This report uses the framework of European Parliament and Council of Ministers resolutions, directives and recommendations and looks at child care in the European Union’s commitment to equal treatment for men and women in the labour market.

#### 4. Tax-benefit policies

The Goods and Services Directive adopted in December 2004 is the very first European Community instrument to implement the principle of gender equality outside the workplace, and therefore has the potential to close an important gap in European Union law. However, the limited scope of application of the Directive, as well as doubts surrounding its legal base and position within the overall gender equality framework of the Union have significantly undermined its potential. This measure provoked a large debate at the European level. We have stressed the CWR report and the EESC opinion. The CWR report not only gathers its amendments on the proposal but also expresses the opinions on the Directive of several other European Institutions (such the Committee on Citizen's Freedoms and Rights, Justice and Home Affairs, the Committee on legal Affairs and the Internal Market, the Committee on Industry, External Trade, Research and Energy and the Committee on Employment and Social Affairs). In addition, the EESC criticizes several aspects of the Directive, for example the exclusion of education from its scope which the EESC called "regrettable". Finally, as highlighted in the narrative of 2003, the EESC published its opinion on the Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on modernising social protection for a greater quantity and quality of work (COM(2003) 842 final). In general, the Committee supports the goals of the Commission and also suggests additional requirements necessary for the improvement and modernisation of social protection systems, aiming to make them more "employment-friendly".

#### 5. Access to labour market and employment

As in 2003, the CoR published its opinion on the Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions of June 2003 concerning immigration, integration and employment (COM(2003)336 final). Thus, the CoR continued the debate on integration measures under the economic and social principles of the Lisbon Strategy and the European Employment Strategy. The Committee welcomed the Commission proposal to support integration of immigrants into civil society and the European Union labour market.

#### 6. Equal opportunities and equal treatment

Equal opportunities is one of the main objectives of the EU. In this regard, the European Parliament's debate on women and poverty in October of this year deals with different aspects in this area, trying to ascertain the link between poverty and the disadvantaged position of women in society. At the same time, Odile Quintin's (Director of Employment and Social Affairs of the European Commission) speech addresses the *community acquis* on equal treatment between women and men encouraging to its transposition and effective implementation.

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**2005**

### 1. Reconciliation of work and family life

The reconciliation of work and family life is a mix inextricably composed of caring responsibilities, employment, work organisation, equal opportunities for women and men in the labour market and in society, and also concern for quality of life. The European Parliament debate on the organisation of working time as well as the following opinion by the EESC on the Proposal for a Directive amending Directive 2003/88/EC about the organisation of working time and the Amended proposal of 31 June 2005 clearly demonstrate how these areas are interrelated. First, the EESC opinion illustrates how the European social partners differ greatly in their positions on the revision of the Directive and consequently how they have made no use of the possibility afforded by Article 139 of the TEC in arriving at an agreement. Hence, some criticism can be made towards the Directive. In addition, the report on parental leave commissioned by the Council of Europe proposes to take on different aspects of reconciliation of professional and private life according to gender. This same topic is addressed in the European Commission Green Paper on confronting demographic change which started a debate among several social organizations. The EWL welcomes the Commission's initiative to launch a debate on demographic changes in the European Union. The response to the Green Paper demonstrates that a gender perspective is required in order to provide a solid basis for the formulation of appropriate policies and programmes in the EU that will efficiently respond to the challenges of demographic changes. UNICE also welcomes the debate launched by the green paper and expressed concerns that the green paper does not take sufficient account of companies' needs. Eurofound is another organisation that welcomes the Green Paper while the European Social Insurance Platform is more critical of it.

### 2. Care work and informal work

Taking into account the Lisbon Strategy targets and the goal of a more competitive Europe, having affordable and accessible quality childcare is extremely important to European Institutions, particularly since women are the main carers of children in families. This, at least, is this conclusion reached by Lisa Pavan-Woolfe, the Director for Equal Opportunities of the European Commission, when she spoke in November 2005 on more and better childcare in the European Union at the Brussels Conference on "Perspectives for the improvement of childcare systems in Europe".

#### 4. Tax-benefit policies

Alongside the European Parliamentary debate on gender discrimination in health systems in September we should also note the position of the Social Protection Committee on the national pensions systems and their financial sustainability, one of the most controversial issues at the European level surrounding tax-benefit policies. In these policies special attention to the gender differences in the levels of coverage is necessary. The Commission proposal of 20 October for a Directive in improving the portability of supplementary pension rights is also emphasized in this subject of tax-benefit policies although it could be also approached from the perspective of access to labour market due to its character. The main goal is to facilitate workers' mobility by setting minimum standards for the acquisition and preservation of supplementary pension rights, and thus make them easier to carry across borders.

#### 5. Access to labour market and employment

In addition to the Luisella Pavan-Woolfe speech on migrant women and the labour market at the OECD and European Commission seminar, the Commission Green Paper dealing with economic migration as well as the European Parliamentary debate and the several opinions and reactions that this report created among the European civil organizations, are also notable. First of all, it is worth noting that the Green Paper, covering the central theme of immigration policy (the conditions for admitting economic migrants and the means of managing these migratory flows) launched a public debate on what kind of common migration policy should be developed in the EU. The EESC pushed for EU law to develop a common immigration policy and harmonised legislation. The Social Platform response to the Green Paper gave a further perspective that supported the goal of increasing channels for legal migration into the EU which then encouraged debate surrounding this issue. Gender differences are also taken into account and the protection of migrant women's rights in particular. EAPN also welcomed the initiative of the Commission but, amongst other criticisms, it urged the Commission to move away from a rigid and selective approach of admitting new migrants. In addition, the Expert Group on Trafficking in human beings of the EC defended the promotion of regular and managed migration and standards-based working conditions because of its potential to offer migrant workers a mechanism that is safer as well as guarantee their human and labour rights. Finally, PICUM, defending the rights of undocumented migrants, suggested several elements which could decrease the risk of illegality, the most dangerous situation. The last opinion selected came from the European Platform for Migrant Workers' Rights, which encouraged the EC initiative to re-launch the debate on economic migration, and emphasised the need for a rights-based approach, distinct from the utilitarian approach put forward by the Commission. The CWR also published a report on women's immigration in the EU shedding light on the difficulty experienced by these women in accessing the labour market and the severe discrimination they suffer as immigrant women.

#### 6. Equal opportunities and equal treatment

Concentrating on the employment issues, the speech of Lisa Pavan-Woolfe of October 2005 approached gender equality as more than just equal rights or the fight against discrimination. Thus, she spoke of the interrelation of different aspects of the European gender equality policy such as education, demography and employment. The second annual report on equality between women and men (Commission report on equality between women and men (COM (2005) 44 final) is the first

that covers the EU-25. The report shows the main development in the relative situation of women and men, in particular immigrant women and men, in education, employment and social life as well as outlining future challenges for further promotion of equality between the sexes. This could also be included in the previous topic but we have emphasized it here for its focus on equal opportunities more than any other subject. Certain overlaps occurred again with the CWR and Gender Equality Working Document on the future of the Lisbon Strategy from a gender perspective. Since the Lisbon Strategy tackles fundamentally economic aspects, the revision of the CWR is focussed on topics such as employment, pay gap, access to education and training and so on. This document is included in this section despite the overlaps because its main focus is equal opportunities. At the public hearing organised by the Committee, several actors such as experts from various Member States, administrations, associations and the social partners attended. We have selected only one of those opinions: the Social Platform report on the “Mid-term review of the Lisbon strategy from the gender perspective”. Here the platform of European NGO’s states that the fight for gender equality is far from won. Moreover, it calls on the European Parliament to strongly defend the Lisbon strategy’s social pillar.

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## 2006

### 1. Reconciliation of work and family life

Another public hearing was organized by the CWR in January 2006. The topic chosen was the reconciliation of professional, family and private life to follow up on the Lisbon Strategy. Lisa Pavan-Woolfe's speech detailed the Commission actions to promote the reconciliation of professional and private life in the EU. Likewise, the EP debate on Thursday 23 March 2006 about demographic challenges and solidarity between the generations also addressed the European gender equality policy on reconciliation. In addition, the Eurofound published an extensive report on the different initiatives promoting reconciliation of work and family life at the EU level. UNICE, as a representative

organization of the European Business groups, addresses the topic in its position paper about the positive contribution of reconciliation policies in achieving growth and job objectives set by the EU. 2006 also saw the launch of two Community Programmes related to gender equality: first, the Roadmap for equality between women and men between 2006-2010 (COM (2006)92) and second, the Community Programme for Employment and Social Solidarity (PROGRESS) that deals with working conditions and in which direct references to the reconciliation of work and family life are made. Regarding the Roadmap, the EESC applauded the Commission's political will to continue the commitment to gender equality.

## 2. Care work and informal work

The most prominent advancements in care work this year were the launch of the campaign "Who cares?" and the EWL Position Paper of 31 May 2006 on Care Issues. The general position of the lobby states a concern on the lack of affordable, accessible and high quality care services in most of the European Union, and because care work and gender equality are intrinsically linked, equality between men and women is also a pressing concern.

## 4. Tax-benefit policies

On Tuesday 14 February the EP held a debate on the proposal for a directive of the European Parliament and of the Council on services in the internal market (COM(2004)0002). Some of the MEP's expressed their concerns on the commercialisation of almost all services within the EU that disproportionately affect women, both as the majority of workers in the service sector and as users of those services. The Directive was finally published in December (2006/123/EC).

## 5. Access to labour market and employment

The Commission Staff working document, Second Annual Report on Migration and Integration, published 30th June proposes many topics related to migration trends in the EU; it analyses the changes and describes the actions surrounding the admission and integration of immigrants nationally and at the EU level. This is the second of the annual reports that the EC authors since its Communication on Immigration, Integration and Employment (COM (2003) 336).

## 6. Equal opportunities and equal treatment

In order to simplify and modernize several directives in effect a new one was adopted in July (2006/54/EC) decided by the EP and the Council. It regulates the implementation of the principle of equal opportunities and equal treatment of men and women in relation to employment and occupation. This directive brings together the four previous directives on equal pay (75/117), on equal treatment (76/207 as amended by 2002/73), on occupational social security schemes (86/378 as amended by 96/97) and the burden of proof Directive (97/80 as amended by 98/52). In addition, the speech by Luisella Pavan-Woolfe on behalf of the European Commission, opening the EU presidency conference "Men and Gender Equality" held in Helsinki in October, is relevant because of the emphasis on the role of men in the promotion of equality between genders; an innovative a new approach to this topic.

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2007

### 1. Reconciliation of work and family life

At the beginning of 2007 the EESC received a letter from the imminent Portuguese Council presidency requesting that the EESC draw up an exploratory opinion on the role of social partners in reconciling working, family and private life. The Committee formed its opinion in June and emphasized that reconciliation policies must take into account all existing ways of life in the current European context. In March 2007, the EESC defended its perspective on family and demographic changes arguing that reconciling family life and work ensures genuine gender equality only by taking proper note of changes in living and working conditions. Furthermore, the European Parliament approved a resolution on combining family life and studies, key because of its unprecedented and more extensive definition of work, no longer limited to solely paid work.

### 2. Care work and informal work

At the European Parliament debate on Childcare on Tuesday 13 March the MEP's tackled some of the essential conditions necessary for citizens to make work compatible with family responsibilities.

### 4. Tax-benefit policies

Women are one of the social groups with a higher risk of poverty, thus promoting equality between men and women is an essential element in addressing social protection and social inclusion policies. The Joint Report of the Council of 22 February on Social Protection and Social Inclusion includes specific sections on health care and long-term care as well as making general suggestions for facing other challenges in the European social protection system. Regarding demographic changes and the respective social and economic consequences, many European countries have reformed their pension systems. As a response, the European centre for Social Welfare Policy Research published a report on the challenges in guaranteeing adequate pension incomes for women.

### 6. Equal opportunities and equal treatment

As equality between women and men is one of the major principles of the European Community there are several documents from this year that we have emphasized. It is worth noting that this

European goal is not only applicable to European people but also to people from other countries. For instance, the EWL report from January focuses on the rights and voices of migrant women. The EP debate on the Equality Road-map and the Committee on Women's Rights and Gender Equality Report on this European Action Plan both pay special attention to several issues in connection with gender equality. Similarly, promoting gender equality in the European citizenship was also a main topic addressed at the Brussels Conference in January. The speech of Vladimir Spila, Commissioner for Employment, Social Affairs and equal Opportunities, remarks on the role of men in achieving this goal. As he states, men have a fundamental role to play in promoting gender equality; their participation is indispensable in the process of reaching equal treatment and equal opportunity.

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### **3. Intimate citizenship**

#### **3.1 Introduction**

Over recent decades, questions and issues connected to intimate citizenship have emerged in the political agenda of the EU which can be organised into the following areas:

1. Divorce, separation, marriage
2. Civil partnerships and gay marriage, discrimination on the basis of sexual orientation
  - parenthood
  - adoption
  - definition of family
  - antidiscrimination
3. Reproductive rights
  - abortion
  - contraception
4. Other: Family definitions

The majority of the documents available are related to antidiscrimination for reasons of sexual orientation, the main topic of intimate citizenship addressed at the EU level. Sexual orientation and racial origin are two of the principles addressed under the dominant EU strategy of 'anti-discrimination' policy. Other subjects, while addressed in some European documents, do not constitute considerable topics in the current EU context. Nevertheless, they are mentioned with respect to the goals of the QUING research. A general view of actors involved in the debates about intimate citizenship includes European Institutions such as the European Commission, the Parliament, and the Court of Justice; organizations from civil society have also strongly taken part in the debate, for instance the European Women's Lobby and the Social Platform of European NGO's; ILGA, as the most representative European LGBT organization, has also performed a chief role. Trade Unions, on the other hand, have not taken a significant part in the debates around intimate citizenship.

#### **1. Divorce, separation, marriage**

Because "family matters" are still powers of Member States, marriage, separation and divorce are not large issues. Pertinent documents within this field are mainly related to parental responsibility in cases of separation or divorce. Since the documents do not overtly mention women or gender issues or care responsibilities they have not been selected. One from 2003 however, (Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, replacing Regulation (EC) No 1347/2000) has been emphasized in order to seek some possible connections with our research.

## 2. Civil partnership and gay marriage, discrimination on the basis of sexual orientation

As noted above, discrimination on the basis of sexual orientation is the major topic tackled by the EU policies within its campaign of antidiscrimination. Sub issues within this topic, parenthood or adoption by gay people for example, have been addressed by the European Institutions. To begin, before 1997 there were no provisions in EU law that clearly mentioned sexuality or lesbian, gay bisexual and transsexual (hereafter referred to as LGBT) people. Consequently, there was much debate in the political arena concerning which principles or provisions of EU law implied that discrimination against LGTB violated EU principles and law. At the same time the debate also dealt with the question about which forms of discrimination the EU should tackle. As for sexual orientation, several non-binding resolutions of the European Parliament condemned such discrimination and called upon the EU Member States to end discrimination on sexual orientation and provide legal equality. One of the most significant EP documents, though published before the QUING period, is the 1994 Resolution on Equal Rights for Homosexuals and Lesbians in the EC, which was reiterated by the European Parliament on three more occasions<sup>36</sup>. In this Resolution, the European Parliament called upon EU Member States to provide lesbians and gay men with legal protection against discrimination and to introduce partnership registration options. The issue surrounding partnership between persons of the same sex remains a controversial issue in the EU. In the case of *D v Council* (1999), the European Court of Justice (ECJ) declared that partnership between persons of the same sex registered in an EU Member States cannot compare to marriage between a woman and a man. From a human rights perspective, LGBT people at the EU level do not yet have the same status as heterosexual people.

With regards to **parenthood** and LGTB people, there are few measures approved in the EU. The European Court of Justice again takes on a lead role in these debates and functions as a main source in the search of European policy law. The judgement of *Salgueiro Da Silva Mouta v Portugal* (1999) is important as it demonstrates that the conception of traditional sexuality regulated by heteronormative systems is still determined by many national (and European) policies. Actors in the parenthood debate include mainly the European Court of Justice and the European Council, both having approved a small number of measures on the issue. **Adoption** by gay people is another area to study and here we look to the case of *Frette v France* (2002) which deals with the issue of adoption by a gay man<sup>37</sup>. The final sentence clearly shows how the heterosexual system is still the norm, and not only when referencing the public, it persists even in the organization of intimacy.

Finally, we have highlighted the definition of “family” in terms of same-sex partners. Those which have taken part in the debate are the European Court of Justice, the European Parliament as well as the Council, the Member States and several organizations of lesbian, gay, bisexual and transgender people, both at the national and European levels. Since there is no official definition of the family within the Union legislation and family policies as such do not fall under the European competence,

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<sup>36</sup> Annual reports and resolutions on the observance of human rights in the EU for 1994 (Document A4-0223/96), 1995 (A4-0112/97) and 1996 (A4-0034/98).

<sup>37</sup> This case is further evidence of the persisting heteronormative model. Mr Frette applied to adopt a child but the courts in France ruled that adoption by a gay man could ‘pose substantial risks to the child’s development’. Mr. Frette complained to the European Court of Human Rights claiming that refusal to allow him to adopt a child was in breach of Article 8 of the Convention and was based exclusively on discrimination because of his sexual orientation. Nevertheless, the court did not find a violation of the Convention in this case and refused Mr Frette the right to adopt, arguing that by allowing Mr Frette to adopt, the child’s best interests would be harmed because the child would be ‘brought up by a homosexual and deprived of dual maternal and paternal role models.’

ILGA (Europe), with consistent support from the European Parliament, campaigned strongly for an inclusive definition of 'family' but some Member States resisted the inclusion of same-sex and unmarried couples<sup>38</sup>. In the question of same-sex families, Directive 2003/86/EC, Articles 2 and 3, defines the members of the family entitled to accompany an EU citizen to another member state, although they do not clearly resolve the issue of same-sex married couples (Bell: 2005).

**Antidiscrimination** is an important "sub-issue" for its significance in European legislation and in the principles of the Community. Within the antidiscrimination sub-topic, we can establish two major areas: sexual orientation (the topic addressed here) and discrimination for reasons of race, ethnicity, belief, etc. We can also categorize antidiscrimination based on sex, which is related to actions on the grounds of equal treatment (discussed previously "non-employment issue" and so not dealt with in this section). In current years the EU has transformed the policy arena by extending the grounds on which discrimination is considered illegal. The 1997 Treaty of Amsterdam specifically extends the grounds of inequalities on which national laws must be applied<sup>39</sup>. When the Heads of State and Government of all EU Member States agreed on the 1997 ToA which specifically allowed EU institutions to combat sexual orientation discrimination in its Article 13, the situation for LGTB (lesbian, gay, transexual and bisexual) people significantly improved. In addition, Article 21 of the Charter of Fundamental Rights (2000) provided further initiatives to address discrimination on such grounds. These topics have been mainly incorporated into the European law through two main measures (Directive 2000/43/EC on equal treatment between persons irrespective of racial or ethnic origin and Directive 2000/78/EC on equal treatment in employment and occupation) and one Anti-discrimination Action Programme (2001-2006), though we can find other measures which deal with anti-discrimination. It is worth noting, as Mark Bell states (2002), that sexual orientation discrimination is an issue on the margins of EU law not covered exhaustively by Community law. The EU law in this area is "brief and abrupt" (2002: 88).

### 3. Reproductive Rights

From a feminist perspective, reproductive issues constitute some of the most relevant aspects of women's traditional gendered life, the nature of motherhood and the family. However, because these aspects can be considered as private matters, the Community legislation has not approved many measures on this topic. Likewise, the EU law only deals with issues related to the so-called "public" sphere of the individual. Hence, there are not many measures implemented in the "private" sphere at all, which continues to be regulated by the Member States. Another reason for the lack of attention is connected to health topics. Sexual and reproductive rights are considered health issues at the EU level and, as such, fall outside the governance of the EU. EU policy in this area is only complementary to the various national policies. Nevertheless, we stress several institutional documents related to this topic, which though not generating a large debate at the European level could show the particular position of the European Institutions on the subject.

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<sup>38</sup> Only three Member States currently recognise same-sex marriage: the Netherlands, Belgium and Spain.

<sup>39</sup> Article 13: "Without prejudice to the other provisions of this Treaty and with the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability or sexual orientation".

The EU has recognized some of the problems within reproductive rights regarding access to contraceptives. Even so, concrete actions are necessary in order to properly address these problems. In relation to abortion, despite the fact that some national laws severely restrict women's access to abortion services, Articles 2 and 3 of the EU Treaty as well as Article III-116 of the EU Constitution state that the Union shall eliminate inequalities and promote equality between women and men including access to a high quality of health protection. Moreover, the Charter of Fundamental Rights of the EU Constitution guarantees that the right of equality between women and men (Art II-83) must be ensured in all areas. The European Parliament has acknowledged, as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) notes, that "many health problems only affect women" and therefore has highlighted the necessity for "preventive measures and health promotion directed specifically at women"<sup>40</sup>.

### **3.2 Actors**

The main actors involved in the debates about the "intimate citizenship" issue can be distinguished on three key grounds: European Union Institutions, European Civil Society organizations and European Trade Unions. Following the list, a short narrative provides some information on its particular involvement. Some more details of its particular role in the debates will be provided in the timeline.

#### **1. European Union**

- European Parliament.
- Committee on Women's Rights and Gender Equality (EP).
- European Commission.
- European Council.
- European Court of Justice (ECJ).
- European Network of Legal Experts.

#### **2. European civil society**

- European Women's Lobby (EWL).
- Social Platform.
- International Lesbian and Gay Association (ILGA).
- European Network of Legal Experts in the Non-Discrimination Field.

#### **3. Trade Unions**

- Union of Industrial and Employers' Confederations of Europe / BusinessEurope.

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<sup>40</sup> European Parliament resolution on the follow-up to the Beijing Action Platform (2000/2020 (INI)).

### **1. Actors: Divorce, separation, marriage**

Since this topic is still a competence of the Member States it has not generated any debates at the EU. Hence, no main actors could be addressed.

### **2. Actors: Civil partnership and gay marriage, discrimination on the basis of sexual orientation**

This is the major topic tackled by EU policies within the intimate citizenship issue. Main actors worth highlighting are the European Court of Justice, the European Parliament and the Council, and, from the European social context, the LGBT organizations such as ILGA.

In cases concerning the individual rights of LGTB people as workers, the ECJ has been a key actor in the debates and has made a significant impact on the legal situation of LGBT people in Europe. In contrast, the Court has left the regulation of partnership rights for same-sex people to the discretion of individual states.

With regard to antidiscrimination issues, the principle actors involved in the debate are the following: the European Commission, the European Parliament and the Committee of Women's Rights and the European Court of Justice from EU institutions, from the European civil society women's NGOs (e.g. EWL) as well as LGBT organizations (e.g. ILGA) and legal expert networks. The Platform of European Social NGOs (the Social Platform), as the alliance of representative European federations and networks of non-governmental organisations active in the social sector, have also taken part in the debate.

### **3. Actors: Reproductive Rights**

This topic is commonly addressed from a health perspective. Thus, taking into account that reproductive rights are also considered as a private matter, this subject has not generated significant debate at the EU level. However, we can distinguish the following main actors which have adopted some measures on the topic: the European Parliament, the Council and the CWR.



### 3.3 General Timeline

1995

No relevant document from 1996 has been found on the topics selected for the research.

1996

#### 2. Civil partnerships and gay marriage, discrimination on the basis of sexual orientation

The ruling by the European Court of Justice in the case of P v S and Cornwall County Council marked a breakthrough for trans people throughout Europe. This case established that the European Community's Equal Treatment Directive would apply to all transsexual people throughout Europe.

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1997

No relevant document from 1997 has been found on the topics selected for the research.

1998

#### 2. Civil partnerships and gay marriage, discrimination on the basis of sexual orientation

Discrimination based on sexual orientation was scarcely discussed at the European level before the 2000s. Unlike racial discrimination (another basis for discrimination according to European policy), only a thin legacy of earlier soft law instruments on this topic existed. The European Court of Justice has made notable progress focussing on this area (case Grant v South-West Trains). Also, the European Parliament adopted a resolution on equal rights for gays and lesbians relating to the observance of human rights.

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- European Parliament Resolution of 17 September 1998 on equal rights for homosexual and lesbians in the EC (B4-0824 and 0852/98). E-text, 3 pp., available at: [http://www.europarl.europa.eu/omk/omnsapir.so/pv2?PRG=CALDOC&FILE=980917&LANGUE=EN&TPV=DEF&SDOCTA=10&TXTLST=7&Type\\_Doc=RESOL&POS=1](http://www.europarl.europa.eu/omk/omnsapir.so/pv2?PRG=CALDOC&FILE=980917&LANGUE=EN&TPV=DEF&SDOCTA=10&TXTLST=7&Type_Doc=RESOL&POS=1)

**1999**

## 2. Civil partnerships and gay marriage, discrimination on the basis of sexual orientation

The European Court of Justice plays a continual role in the defence of equal treatment irrespective of sexual orientation. At the *Salgueiro Da Silva Mouta v Portugal* judgement, the Court declared that refusing child custody to a gay man simply because of his homosexuality was in breach of Article 8 of the Convention, the right to a private life. It was proclaimed discrimination on the grounds of sexual orientation and violated Article 14 of the Convention which prohibits discrimination.

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<http://cmiskp.echr.coe.int/tpk197/view.asp?action=html&key=32118&portal=hbkm&source=external&table=285953B33D3AF94893DC49EF6600CEBD49>

**2000**

## 2. Civil partnerships and gay marriage, discrimination on the basis of sexual orientation

Recommendation 1470 is composed of three overlapping topics, discrimination on the basis of sexual orientation, partnership and family definitions. Recalling other previous recommendations,<sup>41</sup> the Assembly of the Council of Europe focuses on immigration policies, rules concerning family reunion and the general trend in discrimination against lesbians and gays. This same year the Charter of Fundamental Rights was approved providing initiatives to address discrimination on grounds of sexual orientation as well as other grounds. Finally, Council Directive 2000/78/EC prohibits sexual orientation discrimination in employment ensuring that it is a matter of shared responsibility between the Union and the Member States.

### **Primary Sources**

- Recommendation 1470 of the Council of Europe of 30 June 2000 on the "Situation of gays and lesbians and their partners in respect of asylum and immigration in the Member States of the Council of Europe". E-text, 2 pp., available at:  
<http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta00/erec1470.htm>

- Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation. PDF file, 7 pp., available at:  
[http://eur-lex.europa.eu/LexUriServ/site/en/oj/2000/l\\_303/l\\_30320001202en00160022.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2000/l_303/l_30320001202en00160022.pdf)

**2001**

## 3. Reproductive Rights

While the directive 2001/83/EC relating to medicinal products for human use (which should include hormonal contraceptives and medical abortion) seeks to encourage trade and eliminate disparities in

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<sup>41</sup> Recommendation 924 (1981) on discrimination against homosexuals; Recommendation 1236 (1994) on the right of asylum; and Recommendation 1327 (1997) on the protection and reinforcement of the human rights of refugees and asylum seekers in Europe.

medicinal products within the European Union, it has an explicit provision barring its application to any national legislation which prohibits or restricts sale, supply or use of medicinal products as contraceptives and abortifacients.

### **Primary Sources**

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**2002**

### **2. Civil partnerships and gay marriage, discrimination on the basis of sexual orientation**

Taking into account aspects of European law that cover gender equality and existing gaps in the legislation, most decisions were exclusively focussed on employment and occupation. In 2002 the Advisory Committee on Equal Opportunities for Women and Men addressed the hypothetical content of a new directive about sex discrimination.

### **3. Reproductive Rights**

Considering that legislation on this issue falls within the Member States powers, the CWR published the resolution on sexual and reproductive health and rights and played a supportive role in the definition of best practices. Particular references to abortion and contraception, from a health perspective but also within the defense of equal treatment between women and men, are also addressed in this resolution.

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- Commission report of June 2002 on Family Benefits and Family Policies in Europe. European, Directorate-General for Employment and Social Affairs, Unit E.2. PDF file, 8 pp. Available at:

[http://ec.europa.eu/employment\\_social/missoc/2002/intro\\_en.pdf](http://ec.europa.eu/employment_social/missoc/2002/intro_en.pdf)

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[http://www.womenlobby.org/site/1abstract.asp?DocID=300&v1ID=&RevID=&namePage=&pageParent=&DocID\\_sousmenu=&parentCat=20](http://www.womenlobby.org/site/1abstract.asp?DocID=300&v1ID=&RevID=&namePage=&pageParent=&DocID_sousmenu=&parentCat=20)

2003

1. Divorce, separation, marriage

From a heteronormative perspective, the Council Regulation 2001/2003 covers civil proceedings relating to divorce, legal separation and annulment of marriage, and matters concerning parental responsibility for children of both spouses when the matrimonial proceedings take place.

2. Civil partnerships and gay marriage, discrimination on the basis of sexual orientation

The ILGA report of April tries to examine various aspects of EU law in issues such as gay marriage, partnerships and parenting; issues traditionally addressed within national legislation but rapidly being addressed by European Union law. Antidiscrimination is also broadly addressed at the Anna Diamantopoulou speech. As for the enlargement of the European Union, the European Commission issued a report on different measures combating discrimination.

Regarding the topic of the definitions of family, a couple of Directives in matters of reunification and asylum approved in 2003 (2003/9/EC and 2003/86/EC) should provide a definition, although they are most likely very general.

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## 2. Civil partnerships and gay marriage, discrimination on the basis of sexual orientation

Regarding the enlargement of the Union, the Green Paper commissioned by the EC sought to publicize the principles of equal treatment and non-discrimination as core aspects of the European social model. Some civil organizations gave a response on the initiative: the Social Platform and the EWL. In general both welcomed the consultation. These same aims were discussed by Vladimir Spidla in his speech opening the Antidiscrimination Conference of The Hague. In addition, we want to highlight the judgement of the European Court of Justice when exercising non-discrimination towards a transsexual person<sup>42</sup>. A data collection study measuring the extent and impact of discrimination in Europe has also been selected as a part of the Community Action Programme to combat discrimination (2001-2006). The EU directive on the right to free movement establishes rules applying to EU citizens and their family members who wish to move to another Member State. As the ILGA report of 2005 shows, this directive will be particularly important for same-sex families who want to exercise their right to free movement.

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**2005**

## 2. Civil partnerships and gay marriage, discrimination on the basis of sexual orientation

Directives 2000/43/EC and 2000/78/EC as well as other legislative actions combating discrimination are particularly linked to the Commission report of February. Also, another report from the Employment and Social Affairs Unit of the EC was published in 2005 addressing actions and measures in the fight against discrimination. The European Network of Legal Experts in the Non-Discrimination Field, a secondary actor involved in the debates on discrimination, also published some reports on this issue. The ILGA report, a document by a leading actor in the debates on discrimination, mentioned the changes from the previous year (2004), including the results of the EU directive on the right of free movement.

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**2006**

## 2. Civil partnerships and gay marriage, discrimination on the basis of sexual orientation

Several documents on discrimination from the year 2006 are worthy of mention. The Community Programme for Employment and Social Solidarity (PROGRESS) tackles this subject of non-discrimination and diversity. The Commission Manuscript on “Religion and Belief Discrimination in Employment” is also an important document regarding the QUING research since discrimination against women is particularly emphasised. Furthermore, the European Institutions, represented by the Commissioner Vladimir Spila, took part in the International Conference held in Canada on the

rights of LGBT people. The Commission communication on non-discrimination showed the European commitment to the promotion of fundamental rights in the EU. Finally, the parliamentary debate on homophobia in Europe and the respective resolution by the European Parliament are also notable.

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**2007**

## 2. Civil partnerships and gay marriage, discrimination on the basis of sexual orientation

In the European year of Equal Opportunities, and perhaps a consequence of the 2006 parliamentary debate on homophobia and resolution, the European Parliament once again published a resolution, outlining the goal to guarantee all fundamental freedoms to homosexual people.

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## 4. Gender-based violence

### 4.1 Introduction

Regarding the QUING project, the most relevant sub-issues we have found in the European context are:

1. Domestic Violence
2. Trafficking for sexual exploitation
3. Sexual Harassment at work

Although in the past the only form of violence against women addressed by the EU was sexual harassment in the workplace, in the last decade domestic violence and trafficking for sexual exploitation have become controversial issues in the EU arena.

These topics are considered part of the “Gender Equality Approach” of the EU but at the same time, they are not always approached from a perspective on gender in official documents<sup>43</sup>. Global structures of inequality and discrimination towards women had not traditionally been taken into account in European laws (Paantjens: 2004). Furthermore, it is not unusual in EU policies that these gendered aspects are absent<sup>44</sup>. We have not added other sub issues mentioned in the guidelines (marital rape, sexual assault and rape, forced marriage, honour crimes) because they are of considerable less importance in the context of the European Union. Consequently, no important documents concerning these forms of gender based violence have been found, either from the European Institutions or civil society. Thus, the main EU sub issues on gender violence are the following: domestic violence (which is sometimes treated in the EU as a human rights issue and other times as a public health issue); trafficking; and sexual harassment at work, which seem to be equally controversial issues in EU policy debates. These sub-issues are not as clearly separated as such in the European policies but are interconnected and sometimes overlapping.

Legal measures combating gender violence are mainly related to economic issues as the EU has legislation powers primarily on issues related to the labour market. For a long time, the only form of violence against women that was addressed by the EU was sexual harassment, and only in the workplace. The EU lacked a legal basis to introduce measures on violence against women. However, in the last decade, the issue of domestic violence has surfaced in EU actions, sometimes labelled as a problem in public health and other times treated as a violation of women’s human rights. (This is clarified below where we further develop these ideas). The EU has generally had little legitimacy in the field of violence against women since the majority of its competences are restricted to economic grounds. Therefore, the link between problems traditionally regarded as “private” (such

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<sup>43</sup> Daphne I (2000-2004) as well as the consecutive (Daphne II -2004/2008- and Daphne III -2007/2013), addressed the problem of violence against women from a gender-neutral perspective, which did not refer to power relations or structural causes of gender violence (Paantjens: 2004).

<sup>44</sup> As we will see, the way of addressing and defining the problem in the Daphne Programmes is an example of this. The shift from addressing “violence against women” to addressing “violence against children, young persons and women” clearly shows how specific gender aspects of violence are not taken into account. The frame analysis we will address in the next step of the QUING research will probably specify this point more exhaustively.

as violence against women) and the economic dimensions had to be revised in the EU Policy context in order to address the goal of equality between genders<sup>45</sup>. Looking at the participants of the policy debates on violence against women (VAW) at the EU level it is worth mentioning the following actors from the EU institutions: the European Commission, the European Parliament as such (national members of Parliament) but also the Committee on Women's Rights and Gender Equality (which is part of the EP). From the civil arena women's NGOs such as WAVE and EWL have played a significant role in the debates, probably more remarkable than in other issues; the large number of secondary sources found for these topics is clearly proof of how social organizations are very concerned and involved in these matters.

## 1. Domestic Violence

Domestic violence is another area in which we find a lack of, or ambiguous, legal basis for dealing with violence against women in the EU. At the same time, the orientation of Community's labour market, as well as trends in trafficking issues, have complicated the legislation surrounding this topic. Before 1997<sup>46</sup>, which probably marks the beginning of debates on VAW, domestic violence had not appeared in the context of European debate. However, from this date onwards the topic has increasingly been treated as a public policy issue in the EU. As we understood in the search for documents on domestic violence, this issue is addressed with particular emphasis in the programmes and campaigns against violence towards women. For example, the launch of the Daphne Programme (2000) and the "Zero Tolerance" campaign (1997) visibly shows a greater awareness on the part of the EU of this issue as a public problem, although there is still no clear trend. The Third (1991-1995), the Fourth (1996-2000) and the Fifth (2001-2006) Community Action Programme on Equal Opportunities between women and men also included references to domestic violence. The majority of women's organizations throughout Europe have been involved in the debates on domestic violence although we have already mentioned the most relevant at the European level such as WAVE and the EWL. The debate, as noted, started around 2000 though a few other campaigns addressed the topic earlier. Nevertheless, there are not yet any EU binding measures.

Referring back to the two main European programmes that deal with domestic violence (Daphne - 2000/2004-<sup>47</sup> and Zero Tolerance -launched in 1997- ) the most controversial aspect is that of the framework of the issue. Public health and human rights represented the main perspectives on the issue, although there were also some other perspectives present within the EU (Paantjens: 2004). In 1999, a real European policy on gender-based violence began. Under the German Presidency, a parliamentary debate launched the campaign against violence towards women. The Daphne

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<sup>45</sup> For instance, Commissioner Papandreou used her mandate for Social Policy in the EU to make progress in the sexual harassment issue; as Van der Vleuten points out: "She framed sexual harassment as an obstacle to the proper integration of women into the labour market and protection from harassment as a precondition for equal treatment" (2007: 250).

<sup>46</sup> In 1997 the "Zero Tolerance" campaign was launched.

<sup>47</sup> The Daphne Programme (decision n° (293/2000/EC) has been launched two more times: Daphne II (2004-2008, decision n° (803/2004/EC) and Daphne III (2007-2013, (COM(2007)0102 ).

Programme<sup>48</sup> (2000-2004) is the first in Europe to deal with violence against women on a larger scale. Before its final approbation in 1999 (Decision 293/2000/EC), there were several reactions creating a confrontation between the human rights and the public health perspectives. Against those women's organizations that defended a human rights perspective, the EESC<sup>49</sup> represented the main position defining violence against women as a public health matter. Since the EU did not have legal basis to address the VAW topic, Article 235 Treaty of Amsterdam (1997) was suggested in the EP arguing that gender-based violence should be positioned as a violation of human rights. However, the opposition of some Member States and the chance that a Programme on this basis could be blocked generated a change in the debate, framing violence against women as a public health issue rather than a human rights issue within the Daphne Programme. This allowed a shift in the definition of the problem, seen as a de-generated approach: "violence against women" became "violence against children, young persons and women".

In conclusion, the 1999 decision that established the Daphne Programme, ignoring the position of several women's organizations such as WAVE, did not see gender violence as a policy problem because it forms a violation of human rights but because it poses a health challenge for the members (for reasons of social and economic costs). On the other hand, the "Zero tolerance" campaign launched by the European Parliament in 1997, framed violence against women as a human rights violation. This campaign established several causes responsible for reproducing the problem (specific attention was given to domestic violence) such as social taboos, stereotypical ideas and unequal gender power relations.

In addition to the confrontation around the health and human rights framing, another topic underlying debate on domestic violence amongst the actors involved is in relation to the categorization of it as a private instead of public matter. As previously mentioned, most documents from the EU official institutions (EESC, CoR, Commission, etc) considered the problem a women's problem. Violence against women has traditionally been taken for granted or perhaps only acknowledged as an existing problem concerning the private sphere of individuals. On the other hand, texts by some of the actors involved (for instance, Committee of Women's Rights of the EP and NGOs WAVE, EWL) that represent voices of women argue that violence against women is a gendered problem indeed, and a public and social matter not a private one. In these documents, unlike most of the EU documents, causes and effects of violence against women are generally addressed.

## **2. Trafficking for sexual exploitation in human beings**

The inclusion of trafficking in European policy-making is still a relatively recent development though it is now a big issue. Since 1996, the EU has developed a broader approach in the prevention of and fight against trafficking for sexual exploitation in human beings. Because the majority of people trafficked are women and girls, and they are manipulated specifically for the purpose of sexual

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<sup>48</sup> Amended Proposal for European Parliament and Council Decision adopting a Programme of Community action (the Daphne Programme) (2000-2004) on measures aimed to prevent and protect against violence against children, young persons and women.

<sup>49</sup> This is the consultative assembly of European social and economic partners (representatives of business, employers and trade unions). The Treaty of Rome (1957) in order to unite different economic interest groups established it. The role of the EESC is purely consultative, however, its influence now extends from merely economic issues to matters such as social policy, environment, education, health, customers protection, etc., which explains its important role in the debates on VAW.

exploitation, there is an undeniable link between gender equality and trafficking. Nonetheless, the EU has not extensively elaborated it as such.

Equality between genders is not a reality in today's world and trafficking women for sexual exploitation is complete proof of this lack of equality, and it is also linked to other inequalities such as economic difficulties and social conditions. In many cases, structural social conditions force women to migrate at any cost as they are living in a poorer situation in their own countries (Askola: 2005). Trafficking is linked with illegal immigration, an area in which the EU as well as the Member States have developed and approved many measures on border and immigration control<sup>50</sup>. If we focus on the different aspects of this debate, the problem stems from addressing the topic from a "cross-border" perspective or from a gendered one. Despite the role played by many women's organizations such as the Committee on Women's Rights, WAVE or EWL, the issue of trafficking has mainly been regulated in the EU in relation to the problem of border control and illegal immigration, rather than being dealt with alongside a fight to end gender inequality and the violation of human rights. This perspective also explains the role of the European Law Enforcement Organisation (Europol) in the fight against trafficking of human beings for sexual exploitation in the EU, emphasising organized crime and irregular immigration. In addition, the debates of two more organizations addressing the problem from very different perspectives are appropriate to mention here. First, TAMPEP<sup>51</sup>, an international network fighting for the needs of migrant sex workers which has taken part in debates about trafficking of women, pays special attention to the protection of these women's human rights, whether trafficked or not. The second organization is Caritas Europa<sup>52</sup>, which has taken active part, with a Catholic perspective, in the debates on trafficking in human beings, especially women. Other institutional actors such as the Commission or the European Parliament have taken part in the debates on trafficking, sometimes addressing the problem again from a cross-border perspective but others from a perspective concerning the achievement of equality between women and men in society.

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<sup>50</sup> European Commission Proposal of for a Council Framework Decision on combating trafficking in human beings, COM(2000) 854 final/2, OJ C 62 E, 27.2.2001; Council Framework Decision of 19 July 2002 on combating trafficking in human beings, 2002/629/JHA, OJ L 203, 1.8.2002; Brussels Declaration on Preventing and Combating Trafficking in Human Beings. European Conference on Preventing and Combating Trafficking in Human Beings (Global Challenge for the 21st Century), under the Danish Presidency of the EU, Brussels, 18-20 September 2002; European Commission Proposal for a Council Directive on the short-term residence permit issued to victims of action to facilitate illegal immigration or trafficking in human beings who cooperate with the competent authorities, COM(2002) 71 final, OJ C 126 E, 28.5.2002; Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, OJ L 261, 6.8.2004.

<sup>51</sup> TAMPEP (European Network for HIV/STI Prevention and Health Promotion among Migrant Sex Workers) is an international networking and intervention project operating in 24 countries across Europe. It has been funded since 1993 in response to the needs of migrant sex workers in Europe based on the principles of the protection of human rights and the direct representation of sex workers. Its general aims are to: 1) advocate for the human and civil rights of migrant sex workers; 2) facilitate the sharing of knowledge, experience and good practice amongst the members; and 3) develop and implement effective strategies of health promotion and social protection amongst migrant sex workers across Europe.

<sup>52</sup> Created in 1971 and one of the seven regions of Caritas Internationalis, brings together 48 organisations that are working in 44 European countries. Caritas Europa, from a Catholic perspective, focuses its activities on issues related to poverty and social inequality, and issues of migration and asylum, both within the European Union and in all other European countries.

### 3. Sexual harassment at work

Although the European legislation has changed since 1957 broadening its grounds to the promotion of equal treatment and the fight against discrimination, the main focus of the EU law on violence against women has been in those issues connected to the labour market. For instance, sexual harassment was clearly linked to employment when it became part of the political agenda in the 1980s, though not through binding measures<sup>53</sup>. These measures began with the 2002 Directive on Equal Treatment, in which Article 2.3 states that “sexual harassment within the meaning of this Directive shall be deemed to be discrimination on the grounds of sex and therefore be prohibited”. According to the European Institutions, sexual harassment is against the principle of equal treatment and at the same time is considered an offence to the dignity of women and men at work. Hence, over the past decade the Community institutions have undertaken several initiatives to prevent and combat sexual harassment at work, most of them approved as a result of strong pressure by national women's organizations. Meanwhile, European organizations of employers and trade unions (such as ETUC, UNICE or EESC) also played an important role in the debate on sexual harassment, but were not initially able to reach agreement on this topic, although consulted by the Commission. Likewise, the Transnational Advocacy Network (TAN)<sup>54</sup> was also a leader in the debates about sexual harassment; this organisation successfully raised the issue in the EU in the early 1980's and campaigned for its amendment to the 1976 Equal Treatment Directive in the year 2002.

In conclusion, after difficult confrontations among the Member States, the European institutions and the social and economic organizations over the last 20 years, sexual harassment has finally been defined as sex discrimination at the EU level. The Community, however, has not elaborated on the gender dimensions of sexual harassment yet.

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<sup>53</sup> In 1986, the European Parliament adopted a Resolution against sexual harassment in the workplace, sexual violence, trafficking, prostitution and pornography but it was not followed by any specific actions. As Van der Vleuten points out The Council “saw no reason to undertake action on most of the topics, as they were still too far removed from the workplace” (2007: 250).

<sup>54</sup> A broad transnational network that was formed around shared values, for example, in the areas of Human Rights, violence against women or environmental destruction.

## 4.2 Actors

The main actors involved in the debates about the “violence against women” issue can be distinguished on three key grounds: European Union Institutions, European Civil Society organizations and European Trade Unions. Following the list, a short narrative provides some information of the actors’ particular involvement. Some more details of their particular role in the debates will be provided in the timeline.

### 1. European Union

- European Parliament.
- European Commission.
- European Court of Justice (CJEC).
- Committee of the Regions.
- Committee on Women's Rights and Gender Equality (EP).
- European Police (Europol).
- European Foundation for the Improvement of Living and Working Conditions.

### 2. European civil society

- Women Against Violence Europe (WAVE).
- European Women’s Lobby (EWL).
- European Observatory on Violence Against Women<sup>55</sup>.
- Transnational Advocacy Network (TAN).
- European Network for HIV/STI Prevention and Health Promotion among Migrant Sex Workers (TAMPEP).
- Caritas Europa.

### 3. Trade Unions

- European Economic and Social Committee (EESC).
- European Trade Unions Confederation (ETUC).
- Union of Industrial and Employers’ Confederations of Europe / BusinessEurope.

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<sup>55</sup> The European Observatory, set up in 1997 by the EWL European Policy Action Centre on Violence Against Women, is an expert group composed of women from each of the Member States of the European Union who have extensive expertise in the area of violence against women. The task of the European Observatory is to advise EWL on how it should develop recommendations for the European institutions to follow-up actions and build strategies in order to combat violence against women in the European Union. Currently, the Violence Policy Centre and its European Observatory are working on the development of National observatories to combat violence against women. The mission of these observatories is to monitor policies on violence against women at the national level.

### **1. Actors: Domestic Violence**

Two main turning points have generated much debate on domestic violence at the EU level. Firstly, the confrontation between the health and human rights frame as was detailed above. Most of women's organizations such WAVE or the EWL defended the human rights frame while other organizations such the EESC represented the position in the definition of violence against women as a public health matter. On the other hand, the consideration of domestic violence as a public or a private matter also differentiated the actors' positions at the EU level. Most of the EU institutions such the Commission, the Committee of the Regions or the EESC considered domestic violence as a women's problem; NGOs such WAVE and the EWL and the Committee of Women's Rights of the EP argued that domestic violence is a gendered problem indeed, hence not a private matter but a public and social one.

### **2. Actors: Trafficking for sexual exploitation in human beings**

This issue is addressed from very different perspectives depending on the actors' positioning. Tackling trafficking as a border problem explains the involvement of the European Law Enforcement Organisation (Europol). The Committee on Women's Rights, WAVE or the EWL dealt with the issue as a problem of gender inequality. TAMPEP, on the other hand, paid special attention to the protection of human rights, taking into account that most of the women implicated are immigrants. From the European civil society we should also mention the participation of Caritas Europa. Finally, other institutional actors, such the Commission or the European Parliament, have taken part in the debates on trafficking, sometimes addressing the problem again from a cross-border perspective but others from a perspective concerning the achievement of equality between women and men in society.

### **3. Actors: Sexual harassment at work**

The participation of European organizations of employers and trade unions such ETUC, UNICE or EESC is important in the debates on this topic. In addition, women's organizations have exerted strong pressure on European Institutions to develop measures to combat this problem.

## 4.3 General Timeline

1995

### 3. Sexual Harassment at work

The Fourth World Conference on Women, celebrated in Beijing, China, in September 1995, stressed the importance of those policies oriented towards the goals of equality, development and peace for all women. The EU, adopting the spirit of the Beijing Conference and continuing the development of its Community Action Programmes on equal opportunities for men and women, adopted the Fourth Community Action Programme on equal opportunities (1996-2000) in 1995, for which the foundation was laid down by the Parliament in a previous assessment. Amongst the general aims of the programme was achieving equal opportunities, and the need for decisive action to combat sexual harassment was also emphasized.

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1996

### 2. Trafficking for sexual exploitation

At the Fourth World Conference on Women in Beijing (1995), all Member States of the European Union made commitments to address the issue of violence against women in all its forms. Together with the EU, they agreed to share responsibility for this issue and correspondingly would develop European strategies to combat this violence. In addition, financial support for the creation and development of NGOs active in the fight against trafficking in human beings efficiently complements the position of the public authorities. For example, in 1996, the EU funded the NGO "La Strada" to encourage the prevention of trafficking of women in Central and Eastern Europe, concentrating on the Czech Republic, Poland and Ukraine. The European Commission drafted an initial Communication on Trafficking in Women in 1996 and created, alongside the Council, the STOP programme (Joint action 96/700/JHA) to encourage cooperation between officials in charge of measures to fight human trafficking and the sexual exploitation of children. Furthermore, the first conference of the European Commission on Trafficking in Women (Vienna) was held this year, jointly organised with the International Organization for Migration (IOM). The significance of this conference was that for the first time trafficking of women became the centre of a European



Conference, establishing a framework of diverse and opposing positions on European policies concerning trafficking of women.

### 3. Sexual Harassment at work

Different European studies indicate that the problem of sexual harassment at work is very real, experienced by a large proportion of women. Nevertheless, since the 1991 Recommendation (92/131/EEC) and the Code of Practice (1991), little progress has been made on this issue. The topic has been partially addressed through a Commission study in 1997 as a result of the first round of labour consultations to prevent this problem, which began in July 1996. Replies were received from 17 of the 39 employer and trade union organisations consulted, the majority recognised that sexual harassment is a widespread problem which must be prevented in the workplace for the sake of both the individual and the company. However, opinions differed on the best ways of dealing with the problem (see: Commission Communication of 24 July 1996 concerning the consultation of management and labour on the prevention of sexual harassment at work). As is noticeable below (secondary sources), reports or positions papers on this topic from the Social Partners in 1996 are non-existent. Hence we can imagine that while the competent body at the EU level of the Social Partners was reluctant to advance discussions and agreements in this area, the EU had to continue to facilitate further negotiations to fight against sexual harassment. Some years later, the Social Partners finally reached positions on this subject (see 2007).

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**1997**

#### 1. Domestic Violence

Since 1995, the European Commission has undertaken a number of actions and initiatives aimed at preventing and eliminating violence against women. In 1997, the Commission introduced the Daphne initiative (Joint Action (97/154/JHA)) created to facilitate and support NGOs working in the area of violence, specifically by developing contacts and gathering information, as well as developing preventive and protective measures. By so doing, the EU recognised the importance of the work that women's NGOs have done in this field for many years. High demand for funding under

the Daphne initiative resulted in the adoption of a multi-annual Daphne programme to ensure the continuity of its actions (Daphne Programme (2000-2003), Daphne II (2004-2008) and Daphne III (2007-2013)). In 1997, the EP adopted a report on violence against women calling on the EU and its Member States to adopt a binding convention criminalising acts of violence against women and proposing a European zero-tolerance campaign on violence against women (Committee on Women's Rights Report (A4-0250/1997)). The EP also adopted a report on women in the media<sup>56</sup> in which it pointed out the inadequacy of European legislation in relation to the degrading image of women projected by advertising.

The creation of the European Policy Action Centre on Violence against Women by the European Women's Lobby (EWL) in 1997 is a final improvement taking place in this year. After an evaluation of Member States' progress in eradicating violence against women, tools to address the problem emerged and were high on the States' agenda. Accordingly, the EWL decided to create a Centre in its own structure that acted as a political voice and lobbied for political action in order to address the issue of male violence against women at a European level.

## 2. Trafficking for sexual exploitation

A year after the discovery of the bodies of missing girls in Belgium on 11 April 1997, representatives of 30 non-governmental organizations, Members both of the EP and the European Commission, law enforcement representatives and individuals with expertise in the area of child protection, gathered in Brussels for a hearing on the subjects of trafficking and the sexual exploitation of children. Since violence against children is not an issue in the QUING project we are only interested in recognizing the links between violence against women and violence against children and young people (who are mainly girls). From this perspective, the one-year Daphne Initiative of 1997 (renewed for a second and a third time in 1998 and 1999) aimed to promote actions to combat not only violence against children but also against young people and women. The Daphne Initiative was open to all Member States, and NGOs submitting projects were additionally encouraged to find partners among research institutes, law enforcement bodies, public authorities, schools and training establishments, the media and other sectors whose cooperation might be vital in combating violence.

In this context, the STOP programme launched with Joint Action 96/700/JHA of 1996 but initialised in 1997, aimed to develop a coordinated, multidisciplinary approach to preventing and combating trade in human beings and the sexual exploitation of children.

1997 saw yet other important development concerning trafficking for sexual exploitation; the Council Recommendation on traffic in women and forced prostitution, as well as a Ministerial Declaration. The latter happened under the Dutch presidency at a conference held in The Hague, with the objective of preparing common guidelines to combat trafficking of women. At this conference the European ministers adopted a statement called "Ministerial Declaration on the European Guidelines for effective measures to prevent and combat trafficking in women for the purpose of sexual exploitation", which was one of the first milestones in creating international awareness of the

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<sup>56</sup> Images of women in the media: Report on existing research in the European Union (CE-10-97-122-\*\*-C), published in 1999 by the European Commission, Directorate-General for Employment, Industrial relations and Social Affairs, Luxembourg: Office for Official Publications of the European Communities; Lanham, Md.: Bernan Associates [distributor], 1999. ISBN: 9282856755 9789282856758.

trafficking of women. In this declaration, the term “trafficking of women” is specifically discussed, similar to the UN World Women’s Conference in Beijing which recognized trafficking of women as a specific form of violation of women’s rights. It should also be mentioned, however, that The Hague Declaration considers it trafficking only within in the context of prostitution.

### 3. Sexual Harassment at work

On 19 March 1997, the European Commission launched the second stage of consultations with the social partners under the Maastricht Agreement on social policy concerning the proposal for an EU policy to counter sexual harassment at work (the first round of consultations took place in July 1996). During this second stage, the social partners are able to choose whether or not to negotiate - leading to an agreement on framework which has legal validity at the EU level. The alternative would be to submit their views in anticipation of a policy initiative emanating from the Commission. This Commission's consultation document strongly encourages the social partners to negotiate a framework agreement, but makes it clear that the Commission is willing to proceed if such an agreement cannot be reached. Despite the adoption of a number of voluntary initiatives by the Commission in recent years<sup>57</sup> it seems that the institution believes that too little has been achieved in this area by the Member States and even by the European Community Institutions.

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<sup>57</sup> 1991 Commission Recommendation on sexual harassment and the annexed Code of Practice; 1993 handbook on the implementation of the Code; 1994 Resolution on the appointment of "confidential counsellors".

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**1998**

### 2. Trafficking for sexual exploitation

In late 1998, the Dutch presidency issued a new Communication on recommendations to fight the trafficking of women (COM (98)726). This Communication assessed the progress made since 1996 and encouraged the Member States to co-operate and comply with their legal obligations since they are also considered main actors in the debates and actions against trafficking. The Commission under the Daphne Initiative, launched in May 1997, and the following Daphne Programmes (2000-03; 2004-07; 2007-2013), has supported a number of innovative transnational projects in the field of rehabilitation and reinsertion of victims of sexual trafficking, such as WAVE (Women Against Violence in Europe)<sup>58</sup> which continues to participate in debates on VAW as a outstanding actor-organisation.

### 3. Sexual Harassment at work

In the Second Expert Report on sexual harassment in the workplace the Commissioner Pádraig Flynn stated that “sexual harassment is still endemic, often hidden, affecting all Member States and existing in all kinds of companies”. The report, mainly concerning sexual harassment, sheds light on the fact that there is still little awareness on the issue, and that it is far from being considered a problem that needs to be systematically tackled. As the report describes, it is still quite common that the career of the harassed employee, rather than that of the harasser, is negatively affected. Finally, as we know, the Burden of Proof Directive in cases of discrimination based on sex (97/80/EC) was recently approved (15 December 1997) and has the potential to greatly advance the unfair situation

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<sup>58</sup> The WAVE Network was founded in 1994 and launched its activities at the World Conference on Women in Beijing in 1995 although it could not fully develop its activities until 1997 due to lack of funding; however, the network successfully applied for funding from the European Commission and the above mentioned Daphne Initiative.

in which women can find themselves, as it favours the employee being harassed and not the aggressor.

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**1999**

#### 1. Domestic Violence

In response to the 1997 European Parliament resolution on the need to establish a European Union wide campaign for zero tolerance of violence against women (A4-0250/1997), since 1999 the European Commission has been conducting a European campaign to raise awareness on violence against women. In this context, the Commission has undertaken specific programmes, such as Daphne or STOP, as well as carried out a range of initiatives in order to effectively communicate the messages. In response to these initiatives, both the Economic and Social Committee and the Committee of the Regions published opinions on the Daphne Programme, which were formally presented by the Commission through an Amended Proposal of the European Parliament and the Council, (COM (1999) 244 final). In addition, as a result of the European Parliament debate on violence against women held in March, the Committee on Women's Rights launched a report analysing the Daphne Programme and the Commission amended proposal.

Other evidence of progress towards the ending of domestic violence includes the presentation of the Eurobarometer 51.0 measuring the views on domestic violence of European citizens as well as the first ever official study on domestic violence in 15 countries of the EU, presented by the EWL. This provided data which not only gave a European overview on domestic violence but also proposed recommendations on improvements for future data collection. Two more events stressed the importance of this campaign, namely, the European inter-ministerial conference on violence against women held in Cologne in March 1999 under the German Council Presidency, and an expert meeting on violence against women organised by the Finnish Presidency in Jyväskylä in November 1999.

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**2000**

### 1. Domestic Violence

In 2000 the final Decision of the European Parliament and of the Council adopted the Daphne Programme (293/2000/EC). The Daphne Programme (2000-2003) grew out of the Daphne initiative, which ran from 1997 to 1999. The publication of the brochure “Breaking the silence”<sup>59</sup> under the zero tolerance campaign was also an important act which demonstrated the level of European concern surrounding the problem of VAW. Violence was understood in the widest possible sense, from

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<sup>59</sup> “Breaking the silence” was the brochure published for the zero tolerance campaign (launched in 1997), with the empowerment of women as one of its represented goals. Portraying women as survivors and not as victims was seen as a way to reach it.

sexual abuse to domestic violence, from commercial exploitation to bullying in schools, from trafficking in women to discrimination-based violence against disabled, minority, migrant or other vulnerable people. However, in this context domestic violence has taken on the most relevance in the campaign. Two other events, also important to the timeline, are the Lisbon International Conference on Violence against Women in which we want to emphasize the relevance of the Commissioner Anna Diamantopoulou's speech, as well as the WAVE Training Programme on the prevention of domestic violence.

## 2. Trafficking for sexual exploitation

Under the European campaign to fight against VAW, trafficking for sexual exploitation has been the pillar of the issue. In general, violence against women is strongly tied to the sexual abuse of children (for example, see the Daphne Initiative). The Communications from the Commission to the Council and the European Parliament on combating trafficking (COM (2000) 854 final) reflect this by joining the fight against trafficking in human beings with the battle against the sexual exploitation of children.

Trafficking of women, on the other hand, has been approached by the international institutions as a problem of transnational organized crime. Accordingly, under the United Nations Convention against transnational organised crime, the Council signed a Decision on combating the trafficking of persons, especially women and children, demonstrating The European Union's commitment to international cooperation against transnational organized crime.

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2001

### 1. Domestic Violence

In its strategic framework of gender equality for the period 2001-2005, the Commission has included the promotion of gender equality in civil life hoping to have created an essential tool in fighting domestic violence towards women. Gender equality, and the elimination of any kind of violence against women, is related to the question of the full enjoyment of human rights and fundamental freedoms regardless of race, ethnic origin, religion or belief, disability, age or sexual orientation. The EWL report "Towards a common European framework to monitor progress in combating violence against women" also demonstrates this consideration.

### 2. Trafficking for sexual exploitation

When the STOP Programme came to an end on 31 December 2000, the Commission proposed an extension for a period of two years with the STOP II Programme (Council Decision 2001/514/JHA) to ensure continued support. In addition to this campaign, the European Parliament launched a strategy to combat the trafficking of women, outlined by the document titled "The misery behind the fantasy: from poverty to sex slavery". The first volume of the WAVE Magazine (Fempower) also asserts the fight against trafficking in women as one of the major aims of the organization.

In addition to these events, the Fifth Framework Strategy on gender equality for the years 2001 to 2006 was launched. In order to change social attitudes towards the sexual exploitation of women, the framework advocates long term preventive measures. Particular attention was paid to women who were subject to multiple discrimination and those who face violence and/or sexual exploitation.

### 3. Sexual Harassment at work

In addition to the promotion of gender equality in civil life, the Commission framework strategy on gender equality (2001-2005) paid special attention to the fight against sexual harassment at work. Not only were projects funded by the STOP and Daphne programmes, but also actions in this field included the following measures: 1) training on equal legislation for the legal professions, labour inspectorates, social partners and NGOs in the EU and in the candidate countries; 2) research and data collection on the gender dimension of health and safety at the work place; and 3) development of structures supporting the implementation of the matters surrounding gender equality in the candidate countries.

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**2002**

#### 1. Domestic Violence

The Daphne programme received more responses than expected by the European Institutions, demonstrating that the Programme clearly meets a deeply felt need within the voluntary sector. The report from the Commission to the European Parliament and the Council of January 2002 on the Daphne Programme presents the progress of the programme since its approval in January 2000 and a summary of its main achievements. In addition, Women Against Violence in Europe (WAVE) launched its fourth Fempower Magazine, this time tackling the problems of migrant women who are victims of (domestic) violence.

#### 2. Trafficking for sexual exploitation

Two significant conferences were held in the European Union in 2002 with regard to trafficking of women, namely, the European Conference on Preventing and Combating Trafficking of Human Beings (Brussels) and the European Conference "Turn the spotlight on trafficking of women" (Syracuse). The European Conference and Brussels Declaration on "Preventing and Combating Trafficking of Human Beings" in September 2002 returned to the "neutral" conceptualisation of trafficking of human beings but emphasised a gender perspective, the combating of gender-based violence and patriarchal structures. The novelty of the Brussels Declaration is that it does not limit itself to trafficking for the purpose of sexual exploitation – as the Declaration of The Hague does – but covers different forms of exploitation. Furthermore, the Syracuse Conference on trafficking in women held in December was organized to raise awareness of the need to expand and intensify the fight against trafficking of women in the Member States and in the accession countries, who are leading actors in the fight. Several other actors were also involved in the conference, some that have a history of combating all forms of trafficking, namely: representatives from the European institutions, social partners and NGOs, international organisations and EU Member States and accession countries. Alongside the documents resulting from both conferences, which can be found

in the web site listed below, we want to emphasise the Expert Discussion Paper on the prevention of the trafficking of human beings as well as the Council Framework Decision on combating trafficking of human beings. This document aims to introduce common framework provisions at the European level as well as calling for common laws and regulations in the field of police and judicial cooperation in criminal matters relating to the fight against trafficking in human beings in the Member States.

### 3. Sexual Harassment at work

The amendment of Council Directive 76/207/EEC of 1976 on the implementation of equal treatment at work, Directive 2002/73/EC, resulted from several judgements<sup>60</sup>, proving that the ECJ has been a crucial actor in the actions and debates on VAW. In this new Directive, which gathers measures to reach equal treatment at work between women and men, sexual harassment was explicitly forbidden as regards access to employment, vocational training and promotion and working conditions<sup>61</sup>.

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<sup>60</sup> See, for instance, Kalanke v Freie Hansestadt Bremen, Case C-450/93 of 7 October 1995, CJEC.

<sup>61</sup> This directive defines sexual harassment: where "any form of unwanted verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment. Furthermore, harassment and sexual harassment within the meaning of this Directive shall be deemed to be discrimination on the grounds of sex and therefore prohibited. A person's rejection of, or submission to, such conduct may not be used as a basis for a decision affecting that person".

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**2003**

### 1. Domestic Violence

The European campaign against VAW is taking shape in different ways in the various organisations and Member States involved. Under the Greek Presidency of the European Union, an International Experts' meeting on Domestic Violence and Trafficking in Human Beings was organized in Athens. We have pointed to the Anna Diamantopoulou speech as a representative document from the European Institutions. The EWL, another important actor involved in the campaigns and debates about domestic violence, also published a report on capacity building for gender equality in the EU in which it expresses concern over the way domestic violence situations are addressed by policies in some Member States.

### 2. Trafficking for sexual exploitation

Within the Brussels Declaration of 2002, an annex of recommendations and recommended practices was attached and highlighted the need to develop an Expert Group on trafficking in human beings. This particular document was established under the Commission Decision of March 2003 (2003/209/EC). In addition, recalling several European and International measures against the trafficking of human beings and women in particular, the Council of Europe signed a Resolution approving initiatives to combat this problem. The International Organization for Migration (IOM), though not a specific European Organization, published a special report on protecting victims of trafficking in the context of certain Member States. Moreover, Caritas Europe published an opinion on this issue. Likewise, under the support of the European Communities' STOP II Programme (Council Decision 2001/514/JHA), the CAT Network also published a brochure against the trafficking of women.

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## **2004**

### 1. Domestic Violence

The CWR published a report concerning any future actions in combating violence towards women, especially domestic violence.

### 2. Trafficking for sexual exploitation

Trafficking is once again the issue in which we have found the most documents and actors involved. It is worth mentioning the Committee on Women's Rights and Equal Opportunities Report on the consequences of the sex industry as well as Luisella Pavan-Woolfe's speech at the Copenhagen Conference of 25 November "Myths and facts on violence against women", detailing her position on violence against women as the Director of Horizontal and International Affairs of the European Commission. The Expert Group on the trafficking of human beings, launched by the Commission Decision of 2003 (2003/209/EC) as a consultative institution on any matter related to the trafficking of human beings, also published two reports on this problem and emerged as a new leader taking part in the debates on VAW.

### 3. Sexual Harassment at work

Under the Irish Presidency in 2004, a report by a consulting group discussed sexual harassment at work and supplied further indicators, facilitating evaluation of the advances made in the fight against VAW.

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[http://ec.europa.eu/justice\\_home/doc\\_centre/crime/trafficking/doc/report\\_expert\\_group\\_1204\\_en.pdf](http://ec.europa.eu/justice_home/doc_centre/crime/trafficking/doc/report_expert_group_1204_en.pdf)

- Opinion of the Expert Group on Trafficking in Human Beings of 24 September 2004 on measures in the Council of Europe Convention on Action Against Trafficking in Human Beings to establish a Monitoring Mechanism. PDF file, 2 pp.

[http://ec.europa.eu/justice\\_home/doc\\_centre/crime/trafficking/doc/opinion\\_greta\\_en.pdf](http://ec.europa.eu/justice_home/doc_centre/crime/trafficking/doc/opinion_greta_en.pdf)

- The Irish Presidency of the EU in association with FGS Consulting and Professor Aileen McGolgan report of June 2004 on Sexual Harassment in the Workplace in EU Member States. PDF file, 173 pp.

<http://www.unece.org/stats/gender/publications/Multi-Country/SexualHarassmentReport.pdf>

### 1. Domestic Violence

Under the Third Summit of Heads of State and Government of the Member States of the Council of Europe held in Warsaw on 16 and 17 May 2005, several measures combating violence against women were approved. The Action Plan adopted during this Summit defines the future role of the Council of Europe and envisages activities to combat violence against women, including domestic violence, as well as trafficking in human beings<sup>62</sup>.

### 2. Trafficking for sexual exploitation

Continuing a commitment to fundamental rights, the Communication from the Commission to the European Parliament and the Council on the trafficking of human beings, aims to progress the prevention and eradication of this problem. Besides this official document, three more reports from three distinct actors involved in the debates are worth noting: the Committee on Women's Rights and Gender Equality Report on strategies to prevent the trafficking of women and children who are vulnerable to sexual exploitation; the TAMPEP position paper on the Trafficking of Women and, finally, the Expert Group of the European Commission's opinion on the trafficking of human beings.

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- Committee on Women's Rights and Gender Equality Report of 14 December 2005 on strategies to prevent the trafficking of women and children who are vulnerable to sexual exploitation. PDF file, 21 pp. <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A6-2005-0400+0+DOC+PDF+V0//EN&language=EN>

- Communication from the Commission to the European Parliament and the Council - Fighting trafficking in human beings: an integrated approach and proposals for an action plan, (COM (2005) 514 final). PDF file, 18 pp.

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<sup>62</sup>Chapter II.4 stresses "The Council of Europe will take measures to combat violence against women, including domestic violence. It will set up a task force to evaluate progress at the national level and establish instruments for quantifying developments at a pan-European level with a view to drawing up proposals for action. A pan-European campaign to combat violence against women, including domestic violence, will be prepared and conducted in close co-operation with other European and national actors, including NGOs".

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**2006**

### 1. Domestic Violence

In November 2006, Madrid, the Council of Europe launched a campaign to stop domestic violence against women, which concludes in March 2008. Drawing on the Action Plan adopted during the Third Summit of the Council of Europe (Warsaw, May 2005) and other soft measures,<sup>63</sup> the core theme of the Campaign is to "Prevent and combat violence against women occurring in the family or domestic unit (domestic violence)". Regarding the three specific aims of the campaign,<sup>64</sup> Member States, participators in the required actions, are further urged to make significant progress in legal and policy measures, in the support for and protection of victims, and in data collection and consciousness raising. In addition, following a decision at the Third Summit of Heads of State and Government of the Council of Europe (Warsaw 16-17 May 2005), the Council of Europe Task Force to Combat Violence against Women (inclusive of Domestic Violence (EG-TFV)) was established in June of this year (CM(2006)93 final), part of the European campaign to fight against VAW. Also in this year the European Economic and Social Committee, sometimes involved in the debates, published an opinion on domestic violence against women.

### 2. Trafficking for sexual exploitation

Europol, as a new institutional actor taking part in the fight against the trafficking of human beings, hosted expert meetings as well as provided training for law enforcement officers. Its report details its view of recommended actions to be adopted to combat trafficking. Two Commission documents concerning trafficking for sexual exploitation were also launched in 2006. One document was the report to the Council and the European Parliament based on Article 10 of the Council Framework (2002/629/JHA) of 2002 and its staff working document. At the same time, The European Women's Lobby, taking active involvement in the fight against prostitution and trafficking in women, published a report on the connections between prostitution and sex trafficking. Finally, the Expert Group on Trafficking in Human Beings of the European Commission published its concerns regarding the

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<sup>63</sup> E.g. Council Framework Decision on combating trafficking in human beings, (2002/629/JHA).

<sup>64</sup> 1) to raise awareness across all 46 CoE Member States that violence against women is a human rights violation and encourage every citizen to challenge it; 2) to urge states to demonstrate their political will by providing adequate resources in order to deliver concrete results in ending violence against women; 3) to promote the implementation of effective measures for preventing and combating violence against women, through legislation and national action plans for implementation of Recommendations Rec (2002)5 and to regularly monitor the progress achieved.

World Football Cup 2006 in Germany and the related assumption of increased trafficking activities around this event.

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2007

### 1. Domestic Violence

Regarding the European Campaign to combat violence against women including domestic violence, several seminars are taking place in 2007, one of which is organised by the Council of Europe in Madrid to launch the campaign against violence. Meanwhile, 2007 marks the year in which the Daphne III programme is launched.

### 3. Sexual harassment at work

In agreement that harassment and violence are unacceptable, the European Employers and Trade Unions reached a conclusion about the common framework in fighting harassment and violence at work. Furthermore, the EWL published a report on different aspects of violence against women, and although we have noted the document within this sub issue, it could also be addressed from other subject areas.

### **Primary Sources**

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- Committee on Women's Rights and Gender Equality Recommendation of 18 April 2007 for second reading on the Council common position for adopting a decision of the European Parliament and of the Council establishing for the period 2007-2013 a specific programme to prevent and combat violence against children, young people and women and to protect victims and groups at risk (Daphne III programme) as part of the General programme "Fundamental Rights and Justice", (A6-0147/2007). PDF file, 7 pp. Available at:

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## **5. Conclusions**

### **Relative importance of the topics in the sub issues in the EU**

From the beginning, European Union jurisdiction has been mainly focussed on economic issues; all those related to the labour market and to employment are especially prominent in the legislation in the Community. As a result, the majority of the documents and actions approved and published address inequalities in the labour market. It is not surprising then that most of the debates in the EU focus on the QUING issue of non employment. Family policies, gender violence and aspects related to the sphere of intimacy (taken from the traditional liberal view of the division of the “public” and “private” spheres) do not fall under the Community competences. For this reason, the issues of intimate citizenship and gender-based violence are weaker debates in the EU compared to those on non employment. However, the EU equality policy has experienced several shifts in the last decade, which are progressively opening the sphere of EU action to areas beyond the labour market.

#### Non employment

The most relevant debates concerning non-employment during the QUING period have been those centred on the reconciliation of work and family life, particularly emphasizing parental leave and part time work, as well as tax-benefit policies stressing goods and services, social security plans, and pensions. Equal opportunities and equal treatment and the gender pay gap are constant issues in the EU gender policy. Other important debates in the production of policy, though with less intensity, are care work and informal work, and access to the labour market. Although the latter cannot be defined as an ongoing controversial debate, its development related to migration from the year 2000 points to its increasing importance.

#### Intimate citizenship

The main topic of discussion in the issue of intimate citizenship in the EU is antidiscrimination concerning reasons of sexual orientation (which also includes some discussions on parenthood and adoption). Other sub issues such as divorce, separation, marriage, reproductive rights, and family definitions, while addressed in some European documents, are not on the whole discussed in the context of the EU.

#### Gender-based violence

Although in the past the only form of violence against women addressed by the EU was sexual harassment in the workplace, in the last decade domestic violence and trafficking for sexual exploitation have gained credibility in the EU arena, though with limitations due to the lack of a legal basis for the EU to legislate in areas that fall outside of its powers.

### **Major changes in gender+ equality policies and in the three sub issues**

#### General gender+ equality policies

From 1995, one of the major changes in the EU has been the implementation of a gender mainstreaming strategy. This has led to the opening of the EU gender equality policy to other areas beyond employment, such as violence, political representation, and family policies. It has also led to

the adoption of strategies that tackle different policy fields, as in the Commission Fifth Framework Strategy and in the Roadmap for Equality. However, it also signalled an increasing shift from the use of legally binding legislation such as directives to the use of soft law such as the Open Method of Coordination. Another relevant shift is the development of an anti-discrimination policy on grounds other than gender, which started with Art 13 of the Treaty of Amsterdam and continued with the approval of two directives.

### Non employment

The Lisbon Strategy and the European Employment Strategy are important changes which have established targets in the area of gender and employment as well as generated reactions from the European civil society relevant to our research. The Directive on Goods and Services, and the surrounding debates, represent an important shift in the attempt to extend the boundaries of the EU gender policy beyond the labour market. Policies in the area of reconciliation of work and family life, including provisions on parental leave, have also stimulated an important, though limited, change towards an extension of EU policy into the private sphere. In addition, other social changes (migration flows, ageing of populations, different life styles, public awareness of discrimination against women, etc.) have motivated the development of debates amongst different actors in “new fields” such as migrant people’s access to the labour market and solidarity between generations.

### Intimate citizenship

Art 13 of the Amsterdam Treaty and Directives 2000/78/EC and 2000/43/EC represent a major transformation as they extend the scope of the antidiscrimination policy to grounds other than gender (race, sexual orientation, etc). These policy changes have had important consequences in terms of the participation of civil actors in the European debates.

### Gender-based violence

Major changes in gender-based violence in the last decade are marked by the beginning of EU policy in the area of violence against women through initiatives like the Commission’s Daphne Programme (2000) and the “Zero Tolerance” campaign (1997). The introduction of this issue also triggered greater mobilisation among women’s European NGOs such as WAVE and EWL, as well as important activism on the part of the Committee on Women’s Rights of the European Parliament.

## **Civil society and political forces**

### General gender+ equality policies

The Unit on Gender Equality within the Commission and the EP Committee on Women’s Rights continue to lead policy changes in the EU on gender equality and all three issues. The creation of a European Gender Institute could bring some changes in the future.

In addition, the Social Policy Agreement attached to the EU Treaty and the inclusion of an Article in the Constitutional Treaty about establishing dialogue with civil society helped to amplify participation of civil society in the EU policy process, although there are still limitations. The involvement of civil society in the Charter and the Constitutional Treaty are examples of such improvements. Moreover, the Commission, in a Green paper, shows the intention of strengthening this dialogue with civil society through a consultation process. However, the lack of documents and difficulties in finding

secondary sources produced by representative actors of civil society show that such participation is not yet strong at the European level. Nevertheless, both the social partners and a number of specialised NGOs are active in the EU policy arena in different fields.

#### Non employment

The European social partners have played an important role in shaping the debates in the area of non employment, though not always with the best results for gender equality (e.g. parental leave and par-time work directives). Umbrella NGOs such as the EWL and the Social Platform have intervened in various employment related debates, while gender experts such as EGGE (the EC's Expert Group on Gender and Employment) or the European Foundation for the improvement of living and working conditions have produced research on the issue. Equality bodies within Commission and Parliament are the main political forces acting on the issue, as well as the European Court of Justice, which has made several decisions on this topic.

#### Intimate citizenship

European NGOs such as ILGA have played an important role in the debate on intimate citizenship. The European Network of Legal Experts in the Non-Discrimination field has also participated in some debates. The Commission has been a relevant actor in the promotion of an antidiscrimination policy on grounds other than gender.

#### Gender-based violence

Alongside the Commission and Parliament, the two NGOs that have had an important role in the debates on gender-based violence are WAVE and EWL.

### **Intersectionality at the EU**

European gender equality law could be seen as the strongest in the world. Since the Treaty of Amsterdam the EU has moved its position from addressing gender inequality as such to attending other grounds of discrimination.

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