

ABSTRACT

OPEN METHOD OF COORDINATION, WELFARE STATES, AND GENDER EQUALITY

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ABSTRACT

This paper explores the social aspect of European integration, referring to the gradual erosion of the differences between the welfare systems of the EU member states. It focuses on one particular policy area, gender equality in employment, and four member states of the European Union (EU), namely, Denmark, Spain, Britain and France, as examples of the four-fold welfare regime typology, each with considerably different starting points in terms of gender. Gender equality in employment is a fruitful area of investigation as (1) it was one of the earliest social policy provisions of the Union, regulated by the 'one-size-fits-all' approach of the Community method for most of the history of the EU; and (2) it is also a crucial component of the 'soft' outlook of the European Employment Strategy (EES), in which the Open Method of Coordination (OMC), encouraging the diversity of the national welfare systems through a non-binding framework, is applied in one of its most fully-developed forms. The OMC poses significant challenges regarding the identification of outcomes not just because it is more recent but particularly because it is non-binding. In this regard, 'Europeanisation' provides a significant analytical tool by revealing that the outcome of supranational governance can be continuing national diversity, although all member states are bound by the same supranational 'discourse' and 'policy vision'. The paper thus concludes with an assessment of 'hard' and 'soft' governance mechanisms in terms of their implications for the social aspect of European integration.

I. Introduction

The integration of the European Union (EU) has been extensively studied from a wide range of disciplinary perspectives. Many studies emphasize the economic, political and legal dimensions of European integration. Its social aspects are less often a topic of investigation. This paper focuses on the social aspect of European integration, with a view to questioning whether the increasing EU presence in employment and social policy is creating a situation in which the differences between the welfare regimes of member states are gradually being blurred, particularly in the light of the new, 'soft', governance tools increasingly used in social and employment policy.

The social aspect of European integration is taken here to refer to the process of the (gradual) erosion of the differences between the welfare systems of the constituent member states of the EU (Threlfall 2003). Within this framework, the paper focuses on four countries exemplifying the four-fold welfare regime typology, which consists of the addition of a fourth, Southern welfare model, to Esping-

Andersen's (1990) now classical three-fold typology (Castles 1995; Ferrera 1996; Trifiletti 1999). These countries are the UK (liberal model), France (conservative model), Denmark (social-democratic model), and Spain (Southern welfare model). The focus on the different welfare regime structures aims to explore whether they are converging towards a single 'European' welfare model, which, in the case of the EU, possibly combines the characteristics of the liberal and social-democratic models in a new 'social policy vision' in accordance with the emerging EU social policy discourse.

Gender equality in employment is the focus of this paper for several reasons. First, it was one of the earliest social policy provisions of the Union, dating from the 1957 Treaty establishing the European Economic Community (EEC). It thus constituted the cornerstone of the subsequent EU social policy, and in contrast to other areas of social policy, which for long remained under the exclusive discretion of the member states, has always been subject to supra-national governance. Second, gender equality in employment is also significant as it gradually became a fundamental principle of the Community law, which has over the years gained the status of a norm. Again different from other elements of European social policy, gender equality is a constitutional principle which cannot be easily negotiated or rejected by individual member states. It thus has the strongest implications for a possible process of the erosion of the differences between the social systems of the member states. Finally, gender equality in employment has always been an area which reflected the omnipresent tension between the economic and the social within the context of the EU, and it therefore provides a fruitful area for the investigation of the extent to which social integration can be a realistic possibility for the Union.

The current status of gender equality in employment in the EU is of particular significance due to the fact that, although it was predominantly promoted through the components of 'hard' legislative framework, such as Treaty provisions and Directives, it is also a core element of the more recent 'soft' approach to employment and social policy in the EU, best illustrated by the European Employment Strategy (EES). Being one of the areas where the Open Method of Coordination (OMC) is applied in one of its most fully-developed forms, the EES has significant implications for gender equality in employment, which was, until recently, one of its ten 'priority areas'. In this context it throws an important light on what novelty is brought by the 'soft' EU approach to employment and social policy in an area with an advanced 'hard' legal background. The assessment of the impacts of the Community method on the national gender equality frameworks and their 'convergence' at the European level is relatively easier due to the more tangible outcomes in terms of the national transposition of EU regulations and the relative 'oldness' of the topic implying an abundance of research in the area. In contrast, the OMC poses significant challenges regarding the identification of outcomes not just

because it is more recent but particularly because it is non-binding. With a view to explaining the transformation at the member state level, which takes place in response to the European initiatives in employment and social policy, 'Europeanisation' provides a significant analytical tool by revealing that the outcome of supranational governance at the national level can be continuing diversity, although all member states are bound by the same supranational 'discourse' and 'policy vision'.

The paper proceeds through the following steps: first, it focuses on the evolution of gender equality as a European norm, both in its 'hard' and 'soft' aspects. The second part draws a brief outline of the development of gender equality in employment in two of the four countries concerned, namely Spain and Denmark, putting the emphasis on the implications of the EES in each of them. The paper concludes with an assessment of 'hard' and 'soft' governance mechanisms in terms of their implications for gender equality in employment, with a view to explore the impacts of 'Europeanization' on the social aspect of European integration.

II. The Evolution of Gender Equality as a Community Norm

Today's European Union was, originally, not a social, but an economic project. It was launched in 1957 as the European Economic Community (EEC), with a view to establishing a common market among its founding members. The EU now has very different meanings and functions attached to it, and, within this framework, EU gender equality policy has undergone a remarkable process of change since the creation of the EEC. In this section, the evolution of the gender equality principle in the EU will be explored in two stages: the progress through 'hard' law, and the more recent 'soft' approach within the general framework of EU employment and social policy, though it should be underlined that this is not an attempt to trace a chronological dividing line between the two, which rather co-exist and complement each other. The distinction rather serves the purpose of clarifying what each of them implies for gender equality in employment in the EU.

II. 1. Progress through 'hard' law

Gender equality in employment was one of the first social policy provisions included in the Community legislation, and thus constituted the cornerstone of the subsequent EU social policy. When the Treaty of Rome was signed by the six founding member states, gender equality was enshrined in Article 119 EEC in the form of a general clause on equal pay for equal work for women and men.

However, it should be underlined that the inception of Article 119 in the Treaty owed much more to economic concerns, in the form of French insistence to include such a clause as a means to prevent distortions to competition, than to social justice concerns (Ostner and Lewis 1995; Hoskyns 1996; Wobbe 2003; Cichowski 2004), thus reflecting the initial tension between the economic and the social in the context of the EU – a tension that was always to remain present in European social policy. The principle of gender equality (in employment) nevertheless gained the status of a fundamental right protected by the Community over the years, first of all, through the *Defrenne III*¹ case, where the European Court of Justice (ECJ) gave direct effect to Article 119. This decision was followed by a series of Directives, which broadened the principle of gender equality in employment to include, among others, equal pay², equal treatment³, and social security matters⁴ in the 1970s, and pregnancy⁵ and parental leave⁶ arrangements in the 1990s. By the 1980s, moreover, equality legislation tended to be accompanied by non-binding political instruments, such as recommendations, resolutions and proposals, and the Commission started to devise its Community Action Programmes on equal opportunities for women and men (Ostner and Lewis 1995; Hoskyns 1996).

The process of the ‘constitutionalisation’ of the gender equality principle culminated with the Amsterdam Treaty in 1997⁷, which enshrined gender equality as a Community principle by making it a central objective of the Union, and by introducing ‘positive action’ and ‘gender mainstreaming’ as Treaty provisions for the first time (Hoskyns 2000; Pollack and Hafner-Burton 2000; Wobbe 2003; O’Connor 2005). Moreover, on the basis of Article 13 of the Amsterdam Treaty, which expanded the scope of the grounds upon which discrimination can occur, the Equal Treatment Directive has been amended⁸ (Bell 2004; Masselot 2004).

¹ Case 43/75, *Gabrielle Defrenne v Societe anonyme belge de navigation aeriennne Sabena*, 8 April 1976. European Court Reports 1976, p. 00455.

² Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the member states relating to the application of the principle of equal pay for men and women. *Official Journal of the European Communities*, L 45, 19/02/1975, pp. 19-20.

³ Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions. *Official Journal of the European Communities*, L 39, 14/02/1976, pp.40-42.

⁴ Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security. *Official Journal of the European Communities*, L 6, 10/01/1979.

⁵ Council Directive 92/85/EEC of 19 October 1992 concerning the implementation of measures to encourage improvements in the safety and health of pregnant workers, women workers who have recently given birth and women who are breastfeeding. *Official Journal of the European Communities*, L 348, 28/11/1992.

⁶ Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC. *Official Journal of the European Communities*, L 145, 19/06/1996.

⁷ Amsterdam Treaty renumbered the ex-Article 119 EEC as Article 141 EC.

⁸ Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards

Hence the policy of gender equality in employment has relied strongly on measures in European law and on the promotion of enforceable legal rights through the so-called 'Community method' of integration (Hoskyns 2000; Mazey 2002; O'Connor 2005). The proactive stance of the ECJ, which has acted as an influential guide for national legislation with its effective case-law on equality (Ostner and Lewis 1995; Hoskyns 1996, 2000; Caporaso and Jupille 2001), has also significantly contributed to the expansion of the protection and rights available to women.

II. 2. 'Soft' approach to employment and social policy

More recently, there has been an increasing usage of 'soft' policy instruments in the area of gender equality, as part of the growing necessity to develop alternative approaches to the governance of the EU employment and social policy in general⁹. For the employment focus of the present paper, the most important step in this direction for gender equality was the launch of the European Employment Strategy (EES) at the Luxembourg 'Jobs' Summit of 1997, of which it has been, until recently, a central element¹⁰. The EES is a constituent part of the Lisbon Strategy¹¹, and is one of the European policies where the Open Method of Co-ordination (OMC) is applied in one of its most fully developed forms¹². The OMC entails a new governance mechanism based on the adoption of European-level guidelines, establishment of indicators and benchmarks tailored to the needs of member states, submission of National Action Plans on Employment (NAP) by member states, and their evaluation by the annual 'Joint Employment Reports' and Recommendations by the Commission and Council. The 'soft' disposition of this new procedure stems from, first, its reliance on soft policy instruments for its realisation (Mazey 2002: 227; Trubek and Mosher 2001), involving the agreement on common targets, exchange of best practices, the use of benchmarking, periodic reporting, experimental policy learning, multi-lateral surveillance and monitoring.

access to employment, vocational training and promotion, and working conditions. *Official Journal of the European Communities*, L 269, 05/10/2002, pp. 15-20.

⁹ The main reasons behind this are the increasing pressure dictated by the economic integration process (Pollack and Hafner-Burton 2000; de la Porte 2002; Dehousse 2003; Pochet 2005); as well as the changes in labour market and family structures (Vandenbroucke 2002; Zeitlin 2005a).

¹⁰ Although the EES had for long been on the agenda since the White Paper on Governance, the Essen Summit and the subsequent European Councils, (for more detail see de la Porte 2000, Regent 2003, Pochet 2005), the turning point in its institutionalisation lay, once again, with the Treaty of Amsterdam, which incorporated the Title VIII on Employment into the Treaty (for a more detailed discussion, see Hoskyns 2000; Pollack and Hafner-Burton 2000; Hemerijck 2002; Regent 2003; Sabel and Zeitlin 2003; Pochet 2005).

¹¹ For the implications of the Lisbon Strategy on the economic and social dimensions of the EU, see Dehousse 2003; Regent 2003; Moreno 2004; Moreno and Palier 2004.

¹² For the development of the EES and OMC through subsequent European Summits and meetings, see de la Porte 2002; Dehousse 2003; Regent 2003; Sabel and Zeitlin 2003; Trubek and Mosher 2003; Barbier 2004.

Second, the OMC is considered 'soft' due to its non-binding character: the method does not involve any sanctions for the member states which do not comply with the objectives (Hodson and Maher 2001; de la Porte 2002; Hemerijck 2002; Regent 2003; Trubek and Trubek 2003, 2005; O'Connor 2005). However, it entails 'peer pressure' for the member states to address the common guidelines and objectives, and to adapt their policies accordingly (Hodson and Maher 2001; Hemerijck 2002; Regent 2003; O'Connor 2005; Pochet 2005).

Third, as employment and social policy were considered to be politically sensitive areas (de la Porte 2002; Mazey 2002; Chalmers and Lodge 2003; Regent 2003; Sabel and Zeitlin 2003; Trubek and Trubek 2003), traditionally left to Member State authority, it was difficult for the Commission to 'coerce' the member states into further Europeanisation in this policy sector (Mazey 2002: 231). Hence the new 'soft' European approach is 'nation-state friendly', facilitating the achievement of coordinated decisions among the member states (Moreno and Palier 2004: 14), and it entails intergovernmental cooperation, with a proliferation of actors contributing to the processes of policy-making and implementation (de la Porte 2002; Regent 2003).

The OMC thus institutionalised a flexible, participatory method of governance, rather than one based on top-down, uniform rules strengthened by sanctions (Trubek and Mosher 2001; Dehousse 2003; Regent 2003), and 'one-size-fits-all lawmaking' (Sabel and Zeitlin 2003). As a crucial new mode of European governance (Hemerijck 2002; Mazey 2002; Radaelli 2003b; Regent 2003), it has been seen as a move away from 'hard law' to 'soft law' (Trubek and Mosher 2001; de la Porte 2002; Trubek and Trubek 2003; O'Connor 2005), symbolising a shift in emphasis 'from harmonisation to convergence of results, permitting a diversity of national policies (Regent 2003; Dehousse 2003; Palier 2003; Radaelli 2003b; Pochet 2005), with 'a capacity for reconciling European action with national diversity' (Zeitlin 2005a: 7).

How, then, is gender equality in employment incorporated into this new framework? The EES, from the Luxembourg Summit of 1997 until the Barcelona European Council of 2002, was based on a pillar structure, composed of the four pillars of employability, entrepreneurship, adaptability, and equal opportunities. Thus gender equality was considered as one of the four building blocks of the new approach as 'Pillar IV' on equal opportunities. As devised in the 1999 Employment Guidelines¹³, this Pillar included four specific points: integrating gender equality across all the four Pillars; tackling gender

¹³ Council Resolution of 22 February 1999 on the 1999 Employment Guidelines (1999/C 69/02). *Official Journal of the European Communities*, C 69, 12/03/1999, pp. 2-8.

gaps in employment; reconciling work and family life; and facilitating the reintegration of women in employment. Starting from the 2001 Employment Guidelines¹⁴, the number of specific guidelines were reduced to three, combining the last two elements. In 2000, the Lisbon Strategy established European targets for the attainment of 70% overall employment, and 60% female employment by 2010. Table 1 summarises the place of gender equality in the transformation of the EES.

TABLE 1. Gender Equality through the different stages of the EES

| 1999 Employment Guidelines | 2001 Employment Guidelines | 2003 Employment Guidelines | 2005 Integrated Guidelines for Growth and Jobs |
|--|---|---|--|
| <p>Four Pillars:</p> <ol style="list-style-type: none"> 1. EMPLOYABILITY 2. ENTREPRENEURSHIP 3. ADAPTABILITY 4. EQUAL OPPORTUNITIES: <p>GL 19. Gender mainstreaming GL 20. Tackling gender gaps GL 21. Reconciling work and family life GL 22. Facilitating reintegration into the labour market</p> | <p>Four Pillars</p> <ol style="list-style-type: none"> 1. EMPLOYABILITY 2. ENTREPRENEURSHIP 3. ADAPTABILITY 4. EQUAL OPPORTUNITIES: <p>GL 16. Gender mainstreaming GL 17. Tackling gender gaps GL 18. Reconciling work and family life</p> | <p>Three Objectives</p> <ol style="list-style-type: none"> 1. FULL EMPLOYMENT 2. IMPROVING QUALITY AND PRODUCTIVITY AT WORK 3. STRENGTHENING SOCIAL COHESION AND INCLUSION <p>Ten priorities for action:</p> <ol style="list-style-type: none"> 1. Active and preventive measures for unemployed/inactive 2. Job creation and entrepreneurship 3. Adaptability and mobility in the labour market 4. Development of human capital and lifelong learning 5. Increase labour supply and promote active ageing 6. Gender Equality 7. Integration of disadvantaged people in labour market 8. Make work pay 9. Transform undeclared work into regular employment 10. Address regional employment disparities | <p>Three Main Areas</p> <ol style="list-style-type: none"> 1. KNOWLEDGE AND INNOVATION FOR GROWTH 2. MAKING EUROPE A MORE ATTRACTIVE PLACE TO INVEST AND WORK 3. CREATING MORE AND BETTER JOBS <p>Key actions:</p> <ol style="list-style-type: none"> 1. Support knowledge and innovation in Europe 2. Reform the state aid policy 3. Improve and simplify the regulatory framework of businesses 4. Complete the Internal Market for services 5. Complete an agreement in the Doha round 6. Remove obstacles to physical, labour and academic mobility, 7. Develop a common approach to economic migration 8. Support efforts to deal with the social consequences of economic restructuring |

The EES was revised and entered into a second stage after the Barcelona European Council of March 2002, which replaced the Pillar structure with three 'overarching objectives' of full employment, job quality and productivity, and social cohesion and inclusion¹⁵, to be achieved through ten 'priorities for action'. Gender equality, within this framework, became one of these latter as priority number six, losing some of its visibility under the previous structure. Furthermore, in addition to the existing targets relating to gender, European targets related to the reconciliation of work and family life have been established for the first time: to provide childcare to at least 90% of children between three years old

¹⁴ Council Decision of 19 January 2001 on Guidelines for Member States' employment policies for the year 2001 (2001/63/EC). *Official Journal of the European Communities*, L 22, 24/01/2001, pp. 18-26.

¹⁵ Council Decision of 22 July 2003 on guidelines for the employment policies of the Member States (2003/578/EC). *Official Journal of the European Union*, L 197, 05/08/2003.

and the mandatory school age and at least 33% of children under three years of age by 2010, as well as targets on eliminating the gender gap in unemployment rates and halving the gender pay gap by 2010 (Rubery *et al*/2003; O'Connor 2005).

Finally, the year 2005 has witnessed another significant stage for the EES, with the mid-term review of the Lisbon strategy. Under the new title of the Community Lisbon Programme, the EES has been streamlined with the Broad Economic Policy Guidelines, setting up the Integrated Guidelines for Growth and Jobs. This new framework covers actions in 'three main areas', namely, knowledge and innovation for growth, making Europe a more attractive place to invest and work, and creating more and better jobs. It is of great significance that there is not even one reference to women or gender in the final document, which came out in July 2005¹⁶. Once again, economic objectives have triumphed over social concerns in the EU, at least when it comes to gender equality in employment.

III. Gender Equality in Different Welfare Models

A very important novelty introduced by the OMC is its recognition of the diversity among the member states in terms of their welfare and labour market policies (see among others Trubek and Trubek 2003; Pochet 2005; Zeitlin 2005a). Indeed, it has been argued that the new method has been developed as 'soft policy coordination' because, across the EU, the European Social Model 'is implemented in many different ways through legal and institutional structures that vary tremendously yet are deeply embedded in national life and costly to change' (Trubek and Mosher, 2001: 6; de la Porte 2002; Dehousse 2003). Its decentralised approach, as opposed to the Community method, is indeed based on the acceptance of divergence among, and even within, the member states, which are free to define the most appropriate measures for implementing their employment and social policies (de la Porte 2002; Regent 2003).

Therefore, in terms of the structure of governance implied by the OMC, one of the most significant questions regarding gender equality, which has been mainly regulated through legal harmonisation, is raised by the new method's celebrated encouragement of diversity and the absence of legal sanctions. There is a considerable possibility that it weakens the already established gender equality framework in the EU. Within the EES, although the key discourse emerging from the European

¹⁶ Communication from the Commission to the Council and the European Parliament, 'Common Actions for Growth and Employment: The Community Lisbon Programme'. COM(2005) 330 final. Brussels, 20.7.2005.

context and adopted by national actors is similar, the steps to be taken by the member states to achieve the transformation that would bring them in line with the European discourse depend on their social policy structures (de la Porte 2002; Chalmers and Lodge 2003; Trubek and Trubek 2003; O'Connor 2005).

In this context, it is argued, some countries can easily adapt to the EES, while others have to make a great effort to comply with it. In this section, a brief overview of the background and evolution of gender equality in four countries exemplifying the four-fold welfare regime typology will be given, with a view to exploring the implications of the EES for gender equality in different welfare structures. The countries are Britain, Spain, Denmark and France, which are selected from the EU-15 rather than the EU-25 since they have been EU members for at least or almost two decades, thus reflecting the traces of EU gender equality policy since the 1970s. The emphasis will be on two member states, which sit at the opposite ends of a continuum of welfare and gender equality structures, namely Spain and Denmark, in order to observe the different frameworks in two 'extreme' cases in terms of gender equality. The other two countries, namely Britain and France will be briefly discussed with reference to the EES.

III. 1. Spain

As an example of the Southern European welfare model (Castles 1995; Ferrera 1996; Trifiletti 1999; Moreno and Palier 2004), the most distinctive characteristic of Spain in terms of gender equality is the 'familialistic' orientation of the welfare state, implying the crucial role played by the family as an institution of welfare production and distribution of income and services (Esping-Andersen 1990; Salido 2002, Moreno 2002, 2004; Moreno and Palier 2004). The importance of the family in Spain can be seen in the predominance of intergenerational dependency and solidarity, low fertility and low female labour market participation rates, which are closely related to the influence of the Catholic religion and a dictatorial regime until 1975, and a peculiar familial division of labour between sexes, where the male head of the family is considered the main breadwinner and the female as the principle carer (Salido 2002; Moreno Minguez 2004). The central position of the family, however, is constantly undermined by a lack of state support and services for families (Esping-Andersen 1990; Flaquer 2000; Guillen et al 2001; Salido 2002; Moreno 2004) in particular for working mothers (Moreno Minguez 2004). The state takes no responsibility for the reconciliation of women's two roles, leading to the 'reproduction of a system based on a very limited amount of family-friendly public measures', which creates 'a situation of mutual dependency of men and women in which the former provide income and the latter care services'

(Flaquer 2000: 29; Trifiletti 1999; Valiente 1997, 2000). In Spain, therefore, social expenditure targeting the provision of family services has been among the lowest in Europe, which certainly had a negative impact on the labour force participation of women with familial tasks, and still has not created adequate institutional conditions to favour the integration of women with caring tasks in the labour market (Moreno Minguez 2004).

Although Spain has largely 'caught up' in terms of its welfare system since entering the EU (Guillen and Palier 2004; Guillen et al 2001), particularly through a growth in women's participation in paid work (Moreno 2004), the Franco period's conceptualisations of the family, and of the division of labour within the family, have had crucial implications for women's employment¹⁷. Although the rates of female participation in the labour market have considerably increased in the last decades, there has been a relatively low participation rate for women in employment (Valiente 1997, 2000; Salido 2002; Moreno 2004). While in the EU the rate of economically active women in 2003 was 48.1%, the rate in Spain was 42.6%.¹⁸ Thus Spain has one of the lowest female activity rates in the EU (Flaquer 2000; Salido 2002, Valiente 2003). Moreover, there are huge differentials between male and female unemployment rates in Spain, and pronounced gender disparities still characterise the labour market, particularly in temporary and part-time work, which are mainly fulfilled by women (Valiente 1997, 2003; Flaquer 2000).

What, then, have been the implications of EU membership on the gender equality framework in Spain? First of all, it must be noted that it was largely the death of Franco in 1975, and not the EU accession which came in 1986, that changed the Spanish context to one of greater freedom and equality, whereby many legislative changes were made 'to adapt Spain to its new, democratic status' (Suarez and Suarez 2001: 5). Especially throughout the mid-1970s and 1980s, therefore, Spain built up a strong body of equal opportunities legislation (Valiente 2000). In terms of the EU 'hard' legal instruments for gender equality, therefore, it can be argued that, although they have been influential in the period of transition to democracy, as well as the period of accession into the EU (through the obligation to transpose the EU legislative framework into national legal order), they did not lead to a considerable change in the Spanish gender equality framework¹⁹, as it is clear from the picture drawn above. It seems correct to argue that sex discrimination in Spain has been the result of a very complex

¹⁷ For a detailed discussion of the Franco period's conceptualization of women's role, see Flaquer 2000; Suarez and Suarez 2001; Valiente 2000, 2003; Moreno 2002, 2004b.

¹⁸ Instituto de la Mujer, *Mujeres en Cifras. Tasas de Actividad en la Union Europea, por sexo* (Activity Rates in the EU, by sex), 2003.

¹⁹ For the development of gender equality legislation in Spain, see Valiente 1997, 2000, 2003; Salido 2002

conjuncture of social factors, such as traditions, education, religious and moral values, and so on: therefore, discrimination is a 'socially-constructed' and deeply-rooted phenomenon (Lopez Guerra 2000).

If we turn to the 'soft' policy structure of the EES, it has often been argued that the EES implies the biggest pressure for transformation for the member states with Southern social policy traditions, which are marked by a 'strong' male-breadwinner/female carer model, where women's situation in the labour market and the overall employment rate are still well below the EU average (de la Porte 2002). The Commission Recommendations and the Joint Employment Reports (JER) by the Commission and the Council, as part of the EES, give significant clues as to the welfare structure and gender regime of each member state, as well as their position with regard to the European guidelines and benchmarks. These documents evaluate the situation of the member states in terms of the European objectives and targets, and identify the areas where each of them needs to improve its performance. An evaluation of these documents shows that, in the case of Spain, throughout 2000-2004, gender equality has constantly been on the agenda. Several recommendations on gender have thus been directed to Spain each year, and have often been repeated in subsequent years, showing the urgency of the need to tackle with the problem. The areas of particular concern in these documents have been the low female employment rates, insufficient efforts to establish gender mainstreaming, wide gender gaps in the labour market, absence of affordable childcare facilities, high share of fixed-term contracts which mainly concern women, and lack of incentives to increase female labour force participation.

III. 2. Denmark

As an example of the Scandinavian/social-democratic welfare regime, Denmark is characterized by a welfare system based on egalitarianism, solidarity, universalism, generous benefit levels, and a comprehensive social citizenship (Esping-Andersen 1990; Christoffersen 2001; Kautto and Kvist 2002; Nielsen and Kesting 2004). It is marked by high de-familialization effects (Esping-Andersen 1990), implying a heavily service-oriented welfare state that takes direct responsibility for the care of children, the elderly, and the helpless, together with providing generous income support for working women (Kjeldstad 2001; Kvist 2001; Roseberry 2002; Nielsen and Kesting 2004). Along with other Nordic countries, Denmark is seen as a pioneer in the promotion of equal opportunities for women and men, and is generally described as a 'woman-friendly' welfare state (Kjeldstad 2001; Nousiainen and Niemi-Kiesiläinen 2001; Hemerijck 2002; Siim and Borchorst 2005).

Compared to the other cases of the present study, Denmark, at least at first sight, offers a much more progressive picture in terms of the patterns of women's labour market participation, which is in nearly the same numbers as men (Kjeldstad 2001; Hemerijck 2002). Women's activity rate is currently around 75.6% in Denmark, while men's is 84% (OECD 2005a). Nevertheless, there are still important imbalances between the labour market situations of men and women, among the most important of which are gender-segregation and wage differentials (Roseberry 2002; Siim and Borchorst 2005), which are mainly due to high rates of public service sector jobs, mainly performed by women.

It can be argued that, while the reality of gender equality has not occurred in any society, Denmark has come closer to achieving this compared to other cases of the present paper. Nevertheless, there have been some significant implications of the Danish EU membership on the gender equality framework in the country, particularly through the necessity to transpose EU gender equality legislation. As Denmark is a pioneer of the Nordic labour law system based on collective agreements rather than legislation (Bruun and Nielsen 1992; Nousiainen and Niemi-Kiesiläinen 2001; Roseberry 2002; Bruun and Malmberg 2004), a large part of the existing labour legislation today, particularly those on gender equality and workers' rights, has been adopted on the basis of EU Directives, in order to adapt the legislation to the requirements of the EU²⁰ (Nielsen and Halvorsen 1992; Bruun and Malmberg 2004). One of the main causes behind gender equality legislation in Denmark is therefore its EU membership which took place in 1973 (Nielsen and Halvorsen 1992). The 'hard' legislative gender equality framework of the EU, therefore, has had considerable influences in the Danish context.

On the other hand, in terms of the EU 'soft' policy framework, Denmark can be considered as a source of inspiration behind many of the ideas and the final shape of the EES itself. It is thus one of the rare member states which do not face particular difficulties in adapting to the new structure, with a remarkably high public services provision, as well as progressive gender arrangements (de la Porte 2003; Sabel and Zeitlin 2003). It has already attained high levels of female employment, and exceeded the Lisbon target of 70% for female employment (de la Porte 2002; O'Connor 2005). Together with Sweden and Belgium, moreover, it is one of the three countries that attained the childcare target of 33% for children under three. What we see from an evaluation of the Recommendations and JERs is, first, that Denmark stands in a stark contrast to Spain in terms of almost all the indicators of the labour

²⁰ For a discussion of the 'male' character of the Danish collective agreement tradition, see Nousiainen and Niemi-Kiesiläinen 2001; Nielsen 1995; Roseberry 2002. For a discussion of the development of gender equality legislation in Denmark, see Nielsen 1995; Roseberry 2002; Bruun and Malmberg 2004.

market situation of women. Thus, in the case of Denmark, these documents do not mainly focus on gender equality, apart from some significant problems concerning the gender-segregation in the labour market and the pay gap between men and women, whereas for Spain, we saw important recommendations signalling the urgent need to prioritise gender equality in the labour market. Second, it must be noted that the 'tailor-made' approach of the EES leads to different problems to come to the fore in each individual member state. Within this framework, Denmark's main problem of gender segregation in different sectors and occupations, as well as the related pay differentials doubtlessly become significant and stand out as areas which require immediate action, although these too have ceased to be pointed out in the JERs and Recommendations over the years, which focused, instead, on more alarming issues such as the ageing population, labour shortages, and integration of immigrant groups in the labour market.

III. 3. Britain and France

Within the EES, Britain, as an example of the liberal welfare regime, stands out as one of the countries which has also reached the general and female employment targets (de la Porte 2002; O'Connor 2005), but which remains remarkably weak at reducing gender pay gaps. Large gender wage gaps and segregation in the labour market come as no surprise in the British welfare system based on the dominance of the market rather than the state or the family. The UK has thus been consistently warned about the need to improve the access to and affordability of care services, gender pay gap, quality of childcare provisions, encouragement of female full-time work, needs of lone parents, and gender segregation in the EES documents. Continental welfare model, on the other hand, stands as one of the groups which face the biggest pressure from the EES (de la Porte 2002), as it relies on a 'strong' male-breadwinner/female carer model, where women's situation in the labour market and the overall employment rate are still well below the EU average (de la Porte 2002). Having achieved the mid-term target for female employment (O'Connor 2005), France, however, constitutes an exception which is remarkably distinguished from the other examples of the Continental welfare regime in terms of gender equality. In particular, policies for reconciliation of work and family life in France are well developed, and when conceived in these terms France can be grouped close to, or even together with, the Nordic countries. Within this framework, while the number of recommendations on gender equality received by France remains somewhat limited, it has nevertheless been directed towards increasing the participation of the social partners in the area of gender equality, which mainly stems from the high level of state involvement in social policy in the country. Although the number of these examples can be multiplied, those outlined above have been consistently repeated by the EU, and shed an important light

on the fact that all these recommendations and warnings strongly point to the specific social policy legacies of the member states under consideration.

IV. Implications for Gender Equality in the EU

What, then, can be said about the implications of this tailor-made approach, which allows member states discretion in devising their own national policies while providing the terms of the progress towards gender equality in employment? While it is still early to assess the actual implementation at the national level, significant measures have been taken by the member states in accordance with the recommendations they have been receiving. Indeed, it has been argued that the new method has modified national systems in line with the common discourse that has emerged (Barbier 2004; Pochet 2005; Trubek and Trubek 2005), and that it has been particularly effective in expanding the terms of national policy debates on gender equality in employment and gender mainstreaming (Zeitlin 2005a, 2005b). However, this common discourse, providing 'cognitive coordination', has not yet changed the basic structures of national social and employment policies, 'which remain indeed very diversified in terms of their outcomes' (Barbier 2004: 22; 2005).

To return to the question concerning the relationship between progress through 'hard' and 'soft' law in the area of gender equality in employment in the EU, it should be noted that each has its own potentials and drawbacks. By entailing formal sanctions for the member states, the 'hard' legal framework has led to considerable change in the way gender equality is conceived in some member states. This is true both for countries with a highly progressive gender equality tradition, like Denmark, and countries where women have been primarily seen in their roles as mothers or wives, such as Spain. In addition, the influence of the EU gender equality directives has been remarkable, especially through the numerous cases brought to the courts to ensure compliance with their provisions. This has gradually led to important legislative change in the member states concerned.

On the other hand, progress through 'hard' legal framework has often been criticised for putting forward no more than minimum standards and lowest-common denominator solutions for the implementation of common goals (Ostner and Lewis 1995; Hoskyns 1996; Cichowski 2004). Although the Directives are legally binding upon the member states, they provide no indication on the form and methods to transpose the aspired goals at the national level (Cichowski 2004). Nevertheless, Article 119 and the subsequent gender equality Directives, along with the activism of the ECJ, pushed the member

states to adapt their legislation on certain important employment-related issues (Ostner and Lewis 1995). In addition, the constitutionalisation of gender equality at Amsterdam and the status of a 'Community social norm' assigned to it (Wobbe 2003: 105) contributed to the establishment of 'an advanced legal framework' for gender equality in employment at the EU level (Hoskyns 1996: 113).

As for the 'soft' framework, the most important question mark relates to its non-binding character, which entails the danger that EU social policy in general and gender equality policy in particular would not be effectively implemented at the level of member states. Secondly, its recognition and encouragement of diversity may complicate the governance of social policy in the EU even further. Yet the appearance of a common discourse of social policy in the EU, a new 'common policy vision' (Palier 2003; Pochet 2005), should not be underestimated. Here, however, it seems necessary to keep in mind the distinction between convergence of dynamics and procedures on the one hand, and the convergence of substantive policy outcomes on the other (Barbier 2005; Palier 2003).

While the 'common language and categorical framework to discuss and evaluate different solutions to similar problems' (Zeitlin 2005b: 11) seems to entail a deeper integration process concerning the social systems of the member states, it must be kept in mind, first, that this common language does not preclude the existence of diverging, even conflicting views about the same concepts in different national contexts (Barbier 2005). The actual processes of policy design and implementation remain largely national, reflecting national social, institutional and political contexts (Barbier and Sylla 2002; Palier 2003; Barbier 2005; Zeitlin 2005b), which remain different. Secondly, the lack of formal sanctions paves the way for the whole process to be voluntary in nature: the procedure based on annual benchmarking exercise itself encourages 'window dressing', whereby countries make every effort to be seen as having attained the target in a very limited time, 'at times overestimating domestic results to get a better 'score', rather than engaging in serious long term reforms' (Collignon *et al* 2005:9; Barbier 2005). Finally, it is very difficult to trace whether the change that has actually occurred since 1997 in the national contexts can be attributed to the EES or other factors (Trubek and Trubek 2005). As Barbier shows with the concept of 'activation', it might well be the case that most of the concepts were already gaining significance at the different national stages due to global economic developments and the action taken by other international organisations, significantly the OECD with its 'Jobs Study' of 1994 (Barbier 2005; Barbier and Sylla 2002).

Nevertheless, the EES at least provides national actors with a new orientation and European resources as a tool to promote their own domestic political agenda (Barbier and Sylla 2002; Palier 2003;

Barbier 2005; Zeitlin 2005b). Furthermore, the strategy certainly serves 'to increase the salience and urgency of particular issues and policy approaches' (Zeitlin 2005b: 11). The process thus entails important elements of social interaction between various levels and actors of policy-making (Palier 2003; Pochet 2005), as well as of socialisation, as implied by the learning exercise.

Although it is much more difficult to trace a substantive policy change at this stage, it is nevertheless possible to discern a considerable change in administrative structures and policy-making bodies, or a procedural change, as a result of the EES since 1997 (Pochet 2005; Zeitlin 2005b), as illustrated by the increasing number of experts with detailed knowledge about the European orientation (Pochet 2005), or the increasing legitimacy of the *Service des droits des femmes et de l'égalité* in the French stage of policy-making, which significantly gained from the consolidation of a 'Brussels arena' (Barbier and Sylla 2002; Barbier 2005; Zeitlin 2005b). Moreover, it would not be wrong to argue that gender equality has been one of the areas which has been most influenced by EU-level action and most open to learning within the framework of the EES (Barbier and Sylla 2002; Barbier 2005; Zeitlin 2005b). However, it seems that for the moment at least, the EES remains 'a source for procedural rather than for substantive convergence' (Barbier 2005: 440), as illustrated by the still very different ways to accommodate gender in the labour market in different welfare structures.

Notably, the potential of the 'soft' approach can only be taken up if it does not substitute, but supplements and reinforces the existing legal framework for the protection of gender equality in employment (Pollack and Hafner-Burton 2000; Hemerijck 2002; Scharpf 2002; O'Connor 2005; Trubek and Trubek 2003, 2005). Thus a 'dual governance mechanism', including both 'hard' and 'soft' elements, seems to be crucial for strengthening gender equality in employment, since, in the absence of a strong European legal framework, today's 'softer' approach would not be possible, and would not yield any effective results. Nevertheless, the division between 'hard' and 'soft' tools should be carefully approached, as it is possible to argue that the initiatives like the OMC gradually seem to transcend the distinction between 'hard' and 'soft' law in an 'emergent system of experimentalist governance', by providing an 'integral continuity between the legally binding norms embodied in EU framework directives ... and the 'soft' commitments of the EES guidelines' (Zeitlin 2005a: 9; Dehousse 2003).

V. Conclusion: Does 'Europeanization' Provide the Answer?

It remains to be seen whether the social dimension of European integration will ever come to the fore as a result of a 'dual governance mechanism', since neither 'hard' nor 'soft' frameworks on their own invoked such a process. This paper has shown that, while the 'hard' legal framework has been influential in bringing a certain common standard for gender equality at the EU level, and raised the protection of women's rights in employment, it has not succeeded in establishing substantive gender equality in any of the member states concerned. The 'soft' policy outlook, in its turn, showed that this was indeed the case by emphasising the diverse persistent problems concerning women in the labour market throughout different welfare structures. What, then, can be the conclusion in terms of the social aspect of European integration? Is it a realistic possibility for the EU, notwithstanding the 2004 enlargement that brought 10 more member states with considerably different social policy traditions? Would it be reasonable to expect a 'convergence' towards a single European Social Model, blurring the boundaries between the welfare systems of the member states?

The obvious answer to these questions would be in a negative direction. The increasing EU presence in employment and social policy in general, and gender equality in particular, does not seem to be leading to a 'European welfare state', in which the outcomes are equal across the board. Does this latter, however, constitute the ultimate aim of European initiatives? This is where 'Europeanisation' comes into play as a significant analytical tool to explore the different impacts of European policies on domestic settings. In one of the most encompassing definitions of 'Europeanisation', Radaelli refers to this process as one of

(a) construction (b) diffusion and (c) institutionalization of formal and informal rules, procedures, policy paradigms, styles, 'ways of doing things', and shared beliefs and norms which are first defined and consolidated in the EU policy process and then incorporated in the logic of domestic (national and subnational) discourse, political structures, and public policies (Radaelli 2003a: 30)

What is important in this process is that it is contingent upon institutional factors, and that the issue of the diversity of national (policy, political, welfare) systems is left open, with the consequence that 'Europeanisation' will produce diversity rather than convergence, because domestic institutions differ widely (Radaelli 2003a). It is thus an asymmetrical process (Featherstone and Radaelli 2003), implying 'clustered convergence' (Börzel and Risse 2003), 'domestic adaptation with national colours' (Risse *et al*/2001), and, thus, a 'differential Europe' (Héritier 2001).

Europeanization, therefore, provides a very useful tool in looking at the development of gender equality in employment in the EU, since neither 'hard' nor 'soft' approaches have been able to bring about 'convergence' of outcomes at different national settings. Its implications on gender equality should be further explored in this context. In terms of the social aspect of European integration, however, despite the apparent diversity of outcomes, the existence of a 'common policy vision', a 'cognitive framework' for gender equality should not be underestimated.

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