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A Forum For Gender Equality?  
The European Community Discovers The  
Other Democratic Deficit

Joyce Marie Mushaben

A FORUM FOR GENDER EQUALITY?  
THE EUROPEAN COMMUNITY DISCOVERS  
THE OTHER DEMOCRATIC DEFICIT

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*A Forum for Gender Equality?  
The European Community Discovers  
the Other "Democratic Deficit"*

**Abstract**

The rejection of the Maastricht Treaty signaled by the Danish referendum of 1992, added to the near-misses witnessed in the British House of Commons and the French referendum shortly thereafter, was at least partially rooted in the concern that further moves towards the political unification of Europe might reinforce a perceived "democratic deficit." While Eastern Europeans are seeking to institutionalize and consolidate the exercise of long-awaited democratic freedoms, West European leaders appear to be on the verge of ceding many of the same rights to a set of remote, bureaucratized decision-making structures, impervious to direct citizen participation and control. The one and only EC organ subject to direct popular election, namely, the European Parliament, has been and remains the very institution bestowed with "undefined powers and little importance." Not surprisingly, it is also the only organ of the Community in which women--comprising over 51% of total EC population--account for at least one-fifth of those capable of influencing Community policy.

The paper reviews a broad spectrum of EC directives and rulings pertinent to gender equality which came into being prior to the Maastricht Treaty, briefly assessing their effectiveness to date. Included are: the "authorizing" clauses found in the 1957 Treaty of Rome (Art. 100, Art. 119); the Equal Pay Directive of 1975; the Equal Treatment Directive of 1976; the Social Security Directive of 1978; the Second Action Program of 1982-85, as well as the Third Action Program of 1991-1995. The author explores the impact of several rulings which have been declared legally binding on the member-states (*viz.*, through the principle of "direct effect," as established by the European Court of Justice)--and elaborates on the degree to which national governments have sought to undercut those provisions.

Last but not least, it addresses the ramifications of the 1987 Single European Act and the 1992 Union Treaty in relation to future prospects for expanded female participation at all levels of Community operation. At issue is whether ostensible moves to "democratize" the Community in structural terms, i.e., through the opening its internal markets under the Single European Act and a strengthening the European Parliament under the Maastricht Treaty, will advance the cause of substantive democracy and gender equality throughout the member states.

*I think it is the duty of governments and the Commission to practise what they preach and I have seen in the latest appointments to the Commission that somebody is not practising what is being preached in the field of equality for women.*

--- Dame Shelagh Roberts, MEP  
January 1981

Vallance and Davies commenced their path-breaking study of female participation in the European Community with an obvious yet consistently overlooked query: "*Where are the Women?*"<sup>1</sup> In fact, the "Europe of the Twelve" encompasses some 327 million residents, of whom more than 167,700,000 (51.3%) are women. The researchers observed that while women did account for more than half of the citizens in Western countries claiming to ascribe to "majority rule," their share of seats in national parliaments during the early 1980s generally fell between two and six percent (Scandinavian countries afforded the proverbial "exception to the rule," reaching 32.4% in Sweden and 34.4% in Norway). The "good news," they reported, was that women tended to fare much better within the parliamentary chambers of the Community than they did on their home turf. By the mid-eighties, female delegates accounted for 18.9% of the total EP mandates, with proportions among individual member-states ranging from 8% to 37%. By contrast, their share of seats in the national legislatures averaged 10.7%, from a low of 2.5% in the French Senate, to 6.5% in the British House of Commons, to a high of 30.7% in the Danish Folketing.<sup>2</sup>

At first glance, the Danish rejection of the Maastricht Treaty in May 1992, coupled with the near-misses witnessed in the British House of Commons and the French referendum shortly thereafter, appear to reflect a growing sense of citizen vexation with "government" in general. Prevalent among those with a deeper comprehension of the Treaty's 200+ articles and



numerous "protocols," however, has been the concern that further moves towards the political unification of Europe will reinforce a perceived "democratic deficit." While Eastern European leaders are struggling to institutionalize and consolidate the exercise of long-awaited democratic freedoms, their Western counterparts seem to be on the verge of ceding many of the same rights to a set of ever more remote, highly bureaucratized decision-making structures, oblivious to concerns about "national identity" and impervious to direct citizen participation and control. The one and only EC organ subject to direct popular election, namely, the European Parliament, has been and remains the very institution bestowed with "undefined powers and little importance."<sup>3</sup> It is also the only organ of the Community in which women--a clear majority of the EC population--account for about one-fifth (an all-time high) of those capable of directly influencing Community policy.

The purpose of this paper is to provide a preliminary assessment of a wide array of Community directives and rulings related to gender equality which came into being prior to the 1992 Treaty on European Union. The list includes the "authorizing" clauses found in the 1957 Treaty of Rome, the 1975 Equal Pay Directive, the 1976 Equal Treatment Directive, the 1978 Social Security Directive, as well as the three multi-year "Action Programs" formally established by the Commission. The broader question raised by this study is whether more active engagement by women in European Community politics is likely to result in better European policies regarding the advancement of women's rights, and if so, in what issue-areas. Let us first consider the existing levels of female participation in the Community organs, along with factors contributing to or working against the incorporation of equality issues into the Community's long-term political agenda.

## I. Accounting for Women in European Politics

Over the last two decades, analysts from many countries have reached a general consensus regarding the factors contributing to low levels of direct female participation in politics.<sup>4</sup> The "usual" reasons proffered for women's limited involvement in national policy-making processes run as follows:

First and foremost, there are the realities of women's everyday lives, rooted in the traditional societal expectation that this half of the species is not only responsible for bearing children but also for rearing them. To this is added the historical presumption that women possess more or less hereditary managerial skills suited only for ensuring the smooth operations of the household, i.e. for the benefit of their male partners. According to one EC-based study, women in paid employment continue to perform, on average, 75% of all housework tasks. In the FRG, 92% of the male respondents held they "don't feel affected by housework"--it is also the country which registers the lowest birthrate in Western Europe: there is no doubt a logical connection between these variables! Of the female delegates to the European Parliament interviewed by Vallance and Davies in the early eighties, 71% were married and 53% had children; more than half were over the age of 45, however, suggesting that they had assumed their political roles after discharging their maternal obligations. It is also conceivable that many voters assume that a man *qua* politician will give the constituency two-for-the-price-of-one, affording extensive wifely hospitality and support services at no additional cost to taxpayer. As one female parliamentarian noted, "*it remains true that what most women, in European or domestic politics, could do with, is a wife.*"<sup>5</sup>

A second factor contributing to the dearth of female decision-makers in the public sphere



is a widespread perception that politics was and remains a male pursuit, requiring a sense of toughness, competitiveness and a high degree of self-confidence. The latter image contradicts patterns of female socialization, as well as the notion that women must uphold standards of "the eternally feminine." The physical prowess required of Knights of the Round Table has certainly been replaced by a willingness to engage in battles of the semantic sort over the centuries--but the emphasis with respect to political "competence" continues to fall on confrontational rather than on cooperative personalities.

Thirdly, there is the clear recognition that politics has become an upper-middle-class occupation which increasingly draws its participants from the intellectually oriented professions. Restrictions on female access to higher education prior to the 1960s meant that few women were seen to possess the formal credentials necessary to comprehend complex socio-political and economic processes, much less to communicate their own solutions. As the Vallance and Davies study demonstrated, however, many of these skills may also be acquired through personal transfer. A significant number of women who have served in the organs of the Community since their inception have hailed from established "political families;" daughters and wives first entered the European Parliament as "male equivalents," that is, as representatives (albeit not as direct replacements, the so-called *Sarghüpfer*) of their nationally established spouses and fathers. They also tend to stem increasingly from the "articulate professions," i.e., university teaching, law, or local politics.<sup>6</sup>

While the traditional constraints on women's involvement in politics no doubt continue to function with respect to Community office-holding, one also finds a number of countervailing trends. First, representatives to the European Parliament are less directly involved with a



particular "constituency" than is to be expected of their national counterparts. Much of the interaction surrounding the EP involves lobbying on the part of major interest associations; while this means that duly elected MEPs may become less "popular" or well-known, it also affords the advantage of enabling them to conduct their business during "normal" working hours. There is a routine character to the rigors of bi-monthly travel from one week-plenary sessions in Strasbourg to two-week committee meetings in Brussels, followed by one week "home" (and only occasionally interrupted by meetings at administrative headquarters in Luxembourg). This peripatetic existence--which consumes about 15% of EP's total budget--seems to derive from the "national egos" of leaders, insisting that each state get its share of prestigious institutions, as well as from the recognition that the EC is "big business" for French, Belgian and Luxemburgian hotel owners and restaurateurs.<sup>7</sup> [I leave open to discussion whether a Community governed predominantly by women would follow the same organizational "logic."] The fact that delegates can count on specifically defined times for plenary and committee meetings, in lieu of dramatic all-night sessions, at least allows them to "plan in" their family activities.

Another factor behind the growing number of women who have joined the parliamentary ranks in Brussels pertains to the status of these seats vis-à-vis government posts in general. Although they are well paid and would seem to be sufficiently "prestigious," the "burdens of office" ascribed to Community parliamentarians are perceived to be less important than positions in the national legislature. Nominations for the EP seats are thus an easy way to "reward" individuals for years of party service--without exacerbating internal party competition for scarce mandates at home.

A third factor which seems to encourage women to run for European office involves

questions of style and method. Greater emphasis on committee work in Brussels and Strasbourg means less grand-standing, and less "*confrontation for confrontation's sake . . . with an opponent whose words one may have to wait to hear on the translation service!*"<sup>8</sup> MEPs also face significantly less harrassment from that ever-present *Weltschmerzindustrie* known as the media. Insofar as this does not correspond with male images of politics, bent on "where the action is," men may find Community work less ego-gratifying and therefore less interesting. Indeed, initial evidence suggests that women tend to work harder than men behind the closed doors of committees: in 1979 over one-fourth of all female MEPs functioned as members of more than one committee, in contrast to less than one-fifth of their male counterparts; no woman refused to serve in any committee capacity, in contrast to ten men; two women sat on three such bodies, a record matched by no man.<sup>9</sup>

Fourth, there is the effect of the electoral process itself. With the major exception of Great Britain, most national governments have turned to a system of proportional representation in selecting their European parliamentarians. This procedural development has moreover contributed to a greater share of seats being occupied by candidates from minority parties (21% for the Communists, versus 12% for Conservatives in 1984, for examples. Bogdanor surmised,

*Whereas under a single-member constituency system, it is the presence of a candidate who deviates from the identikit norm . . . that is noticed, in a party list system, it is the absence of women . . . that will be commented on and resented.*<sup>10</sup>

**Article 138** of the original Treaty of Rome (TR) foresaw "direct universal suffrage," as well as the eventual institutionalization of uniform electoral procedures. The first direct election took



place in 1979; turn-out ranged from 32% in Britain, to 90% in Belgium (where voting is mandatory), mobilizing some three-fourths or 110 million of the total EC electorate. By 1988 the Council of Ministers had yet to reach an agreement with respect to the introduction of uniform election procedures.

Fifthly, it appears that many of the newly formed parties which have managed to gain a foothold in the EP as a consequence of proportional representation also provide women as candidates with a very different "political opportunity structure." Female delegates tend to be concentrated at the left end of the traditional progressive-liberal-conservative spectrum, that is, among the parties which seem to be over-represented when compared to their proportionate strength in the national parliaments.<sup>11</sup> Women account for approximately one-fourth of the mandates controlled by the Ecology Party, for instance, which includes the goal of gender equality in its official platform. This stands in stark contrast to a mere 6% among the ranks of the Conservatives who neither favor a "deepening" of the Community nor any form of "reverse discrimination" which might benefit women (see Figure 1 and Table 1).

Finally, there is the relative youth of the Community organs, in particular, of the European Parliament itself. Less visible under the initial system of appointment by the national legislatures, women's presence in the EP grew significantly with the first direct elections of 1979, in large part because there were no long-entrenched incumbents to overcome. As a creation of postwar democratic governments, both the concept and the architectural features of the EP exude an air of progress and modernity. In the words of one EP member, Joyce Quin,

*There's no place to hang your sword. . . . The whole ethos is very modern and informal with equal access; there's no smoking-room or club atmo-*



*sphere about it at all. . . . The European Parliament seems much more a product of an equal society.*<sup>12</sup>

Whatever the respective weights one might wish to assign to the individual variables, their cumulative impact has been a significant rise in the absolute number of female MEPs, from a "high" of 11 out of 198 under the old appointment system, to 66 out of 410 by 1980, to 75 out of 434 in 1984 (see Table 3). Before we address the prospects for a further expansion of women's influence over EC governance in light of the SEA and Maastricht agreements, let us consider the nature and scope of Community policy towards women as it has evolved since the 1970's.

## **II. Legitimizing European Policies on Gender Equality**

The EC has proceeded along a very slow and cautious path with respect to its focus on equality issues, despite the fact that the original justification for addressing these questions is as old as the Community itself. The key to all forms of Community action on this front is contained in Article 119 of the 1957 Treaty of Rome, which specified the members' obligation to uphold "the principle of equal remuneration for the same work as between male and female workers."<sup>13</sup> The French government had announced its intention to introduce national minimum wage and equal pay legislation prior to ratification of the EEC Treaty; French industrialists feared they would be undercut by external competition as long as other member-states could continue to pay female workers less, particularly in the textile branch. Hence the Community's "founding fathers" [where were its "founding mothers?"] attempted to circumvent the problem of unfair competition by agreeing to accept the equal pay clause. [In this respect, the history of Article 119 is analogous to that of the 1963 Equal Pay Act in the United States, the purpose

of which was to guarantee male wages would not be undercut by the availability of a cheaper labor pool.] Rendering the objective of equal pay for equal work a binding one for all would-be members, the Treaty established a four-year deadline but left the method for attainment to the discretion of the member states. The provision was never actively implemented, until women took up the cause themselves.

The binding character of Article 119 is reinforced by Article 100, which assigns to the Council of Ministers the power to issue directives "for the approximation of such provisions . . . as directly effect the establishment or functioning of the common market." Labeled the "everything else" provision, Article 235 further enables the Council to "take the appropriate measures to attain, in the course of the operation of the common market, one of the objectives of the Community when this Treaty has not provided the necessary powers."<sup>14</sup> Another passage which has gained significance in recent years, Article 177, allows the national courts to refer matters to the Court of Justice in Luxemburg for a "preliminary ruling;" after the judges define the theoretical/normative contours of Community law, the suit is sent back to the domestic court which applies the European interpretation to the facts of the case. Finally, Article 189 permits supplementary or secondary legislation, in addition to specifying the binding or non-binding nature of all forms of Community action. As many national jurists have slowly begun to recognize, "it is this secondary legislation . . . which forms the real body of European anti-discrimination law."<sup>15</sup>

While the scope of Art. 119 appears to be rather narrow (i.e., it is limited to a particular facet of actual work-place relations), Articles 100 and 235 of the EEC Treaty grant wider discretionary *qua* implementational powers in areas not specifically enumerated in order to



achieve the Community's fundamental, long-term objectives. In theory, these powers would seem to place a formidable instrument at the disposal of equality advocates. Their utility is nonetheless restricted in practice by a key procedural barrier: all decisions deemed critical to "national interests" require unanimity, under the terms set by the 1966 Luxembourg Accord. The veto-power inherent in this "compromise," strong-armed into existence by France, swayed the emerging balance of power in favor of the Council of Ministers: the "vital interest" of any single state cannot be overruled—even if that "interest" appears to contravene the needs of a majority of the member-state's own citizens.

The European Parliament has emerged as the primary mobilizer around women's issues, hence it is worth examining the powers and duties assigned to that body in greater detail. It began as the Common Assembly of the ECSC, consisting of 78 delegates who were designated by and generally served simultaneously as members of the national parliaments. It was renamed the European Parliament in 1962, perhaps in hopes of re-publicizing and hence generating more enthusiasm for its activities, although its 142 delegates continued to stem from the national legislatures. The accession of Denmark, Ireland and Britain in 1973 raised the number of MEPs to 183. After some two decades, the Parliament sought further legitimacy in its turn to direct elections as of 1979. With the addition of Greece in 1981, its membership grew to 434; its final expansion followed on the heels of German unification, bringing the total to 518 representatives to date.

Organizationally speaking, the EP is chaired by a President, who is assisted in turn by a Bureau, twelve Vice-Presidents and five Quaestors. Concentration-camp survivor Simone Veil (France), is the only woman to have served as President to date; between 1979 and 1984, the



EP saw a total of five female Vice-Presidents. Parties represented in the Parliament align themselves according to Groups, whose administrative needs are served by an Enlarged Bureau.

The primary duty of the Bureau is to coordinate plenary sessions and debates as well as to administer the affairs of the EP's eighteen permanent committees, to which delegates are assigned for five years (one electoral cycle). Female parliamentarians evince the usual concentration with respect to committee membership (e.g., consumer protection, education, health, child-welfare, social affairs, women's rights).<sup>16</sup> Specialized according to policy areas, each committee tends to develop "a symbiotic working relationship" with a Directorate pursuing similar issues.<sup>17</sup> Not surprisingly, women dominate the EP clerical staff as secretaries and interpreters. The mid-eighties found 230 women situated in the lower administrative grades, vis-à-vis 2,695 men: 10% of the women held posts in Staff Category A, 62-90% in the lower grades of B and C.<sup>18</sup> In 1983, only four women, out of eighty-two officials, were situated at the highest levels of the Directorates. By 1990, only one woman had ever held a seat in the Council of Ministers in addition to British Prime Minister Margaret Thatcher, namely, Foreign Minister Colette Flesch of Luxemburg. Effective January 1989, two women joined the ranks of the EC's seventeen Commissioners, Vasso Papandreou (Greece) who became responsible for Social Affairs and Christine Scrivener (France), in charge of Taxation Policy. Papandreou left the Commission in 1991. At present women head two of the twenty-two Directorate-Generals.

The functions of the European Parliament are regulated under Art. 137 of the Rome Treaty; this body possesses "advisory and supervisory powers" but very few of its responsibilities actually involve legislating. Formal **supervisory powers** include the right of "question-time" vis-à-vis Commissioners and their representatives; delegates may also pass a motion of

censure which would result in the dismissal of entire Commission but guarantee parliamentarians no influence over the appointment of a new one. One increasingly significant role of the EP rests with its ability to publicize Community actions, or lack thereof, on issues near and dear to its members. Although the EP has become increasingly vocal with respect to budgetary decisions, the discretionary portion of the EC budget is limited to 15%; this is comprised largely of monies for the Social Fund, the Research and Regional Funds, over which the parliament does possess a veto right--in fact, vetoing the Community budget was the first major act undertaken by the MEPs following their direct elections of 1979 and 1984.<sup>19</sup>

The EP is more or less routinely "consulted" regarding the issuance of Regulations and Directives formulated by the Commission. Once they are approved by the Council, **regulations** become immediately binding--in theory--and must be upheld by all states; **directives**, by contrast, are binding with respect to the specific goal to be achieved but leave the choice of methods up to individual governments (affording many opportunities for circumvention and delay). The member-states are obliged to pass national laws addressing the substance of all such directives within a specified time-period if there are none on the books at home. Failure to implement a Directive within the established time-frame becomes the business of the Commission, which may initiate infringement proceedings in the European Court of its own accord. The power to issue **decisions**--binding upon the individual organs or states to whom they are addressed but lacking general applicability--rests solely with the Council of Ministers. Weaker still are **resolutions** which usually derive from reports issued by relevant EP committees after they have assessed pending legislation; the latter may propose amendments but the Council is not obliged to adopt these modifications.



The spread of autonomous women's movements throughout Western Europe during the seventies rendered the equality cause visible at both the national and supranational levels. The first EP able to claim for itself a more "democratic" base established an *ad hoc* committee on the situation of women in Europe almost immediately following its instatement in October 1979. Twenty-five women and ten men worked to produce an extensive report (named the *Maij-Weggen Report*, after its primary *rapporteur*) in 1981; they drew upon data accumulated at extraparlimentary meetings in Milan, Manchester, and the commencement of the UN Decade of Women in Copenhagen. The plenary debate scheduled to review its contents on February 10-11 was "at times a turbulent affair" even though the active participants were primarily female.<sup>20</sup> The report was characterized by one male conservative, Mr. Forth of the United Kingdom, as "a bulky document making utterly unrealistic demands . . . seeking commitments of resources which would cause us to cut back on other programmes" [author's note: probably of greater value to European males]. The resulting resolution led to the creation of an eighteen-member Committee of Enquiry on the Situation of Women, focusing on 18 topics for investigation in July 1981; its status became permanent in 1984 as the Committee on Women's Rights (CWR). On January 17, 1984, the CWR presented a 116-point Resolution for plenary debate, which was eventually adopted by 125 against 17 votes, with 55 abstentions. In short, less than half of the EP delegates bothered to cast a vote.<sup>21</sup> Some 59 paragraphs of the Resolution found their way into the Commission's New Action Programme of 1982; the Commission thereafter established its own Advisory Committee on Equal Opportunities for Women and Men.

Formal responsibility for matters pertaining to women rests with the Directorate General on Social Affairs (DG V), where the support for equality measures far outpaces the Council of



Ministers' willingness to remedy past discrimination. Especially interesting is the fact that the so-called "Eurocrats," viz, the Commissioners, have assumed an obvious advocate role. Analysts concur that "without pressure from the Commission and its continuing interest in the development of the equal pay clause in the Rome Treaty, the three directives on women's rights would probably never have been drafted."<sup>22</sup> Ironically, this did not stop those same enlightened officials from successfully attempting to protect their own turf against "preferential hiring" in the case of *E. Delauche v. Commission of the European Communities* (verdict issued on 16. December 1987).

This is not to underestimate the mobilizing role of the new generation of EP representatives. The number of "questions" posed during the formal inquiry period relating to women's concerns rose from 12 interventions in 1978 to 45 after the 1979 elections. Former Social Commissioner Ivor Trevor (1980-84) testified that it was feminist pressure emitting from the directly elected Parliament itself which eventually gave rise to First Action Program. Another significant achievement of the EP delegates in recent years has been their success in reversing the "burden of proof" with respect to discrimination cases, at least after the presentation of *prima facie* evidence in the domestic courts.

To date, no national government (read: no member of the Council of Ministers) has demonstrated a willingness to fight unreservedly on behalf of women's issues. In the sardonic words of one British government official, "There is no problem here, and the problem that there is not is best solved by voluntary agreement."<sup>23</sup> National leaders have proved particularly adverse to any proposition that might require public spending at the domestic level. In 1978 the European Social Fund was required to make a special appropriation for training projects for

women; when the provision lapsed in 1983, the EP sought to counter governmental inaction with a proposal to stop all allocations from ESF to states denying a balanced distribution of its monies to women and men. An ongoing global recession, coupled with rising national unemployment, has rendered all governments unwilling to undertake any action not absolutely compelled by law. Women's socio-economic status within the member-states may become even more vulnerable as result of an increasingly organized "backlash" phenomenon (as illustrated by the rise of right-wing parties).<sup>24</sup>

### III. Community Case Law, "Standing" and Evolving Legal Principles

Let us now consider a number of important legal principles which have been used to extend women's rights throughout EC territory. The Commission may initiate "infringement proceedings" against a particular government, as it did in August 1989 when the Federal Republic refused to factor supplements for child-rearing years into the pensions of Belgian, French and Luxemburgian women who had accompanied their mates to Germany. The Eurocrats have moreover demonstrated a willingness to engage in court battles with the member-states for failing to implement equality directives fully, and within the allotted time-frame. This was demonstrated in two Court of Justice rulings featuring the *Commission of the European Communities v. French Republic* (June 1988 and October 1988, respectively), as well as by the suit involving the *Commission of the European Communities v. Kingdom of Belgium* (pertaining to unemployment benefits and invalidity allowances, May 1991).<sup>25</sup>

The European Court of Justice (COJ), housed in Luxemburg, has also played an active if unintentional role in broadening the framework for EC equality policy (unfortunately information regarding the current ratio of male to female justices is unavailable to this author). Though



an individual's ability to secure legal standing is more limited than that of the Commissioners, the Council of Ministers, and EP members, "average citizens" may seek redress in the event that the national government has failed to implement EC policy. The qualification is that the provision in question must be unconditional or **directly effective**, "that is, if the directive is clear, precise and unambiguous and leaves no discretion to the member state." The principle was substantially defined in the case of *Van Duyn v. Home Office*, 1974.<sup>26</sup> The European Court has determined that all provisions in the Treaty of Rome take precedence over national law. This means that Article 119, in theory, requires no independent, intervening action on the part of national legislatures--instead, its principles automatically assume the character of enforceable domestic law, as further elaborated in the two cases brought to Luxemburg during the early sixties.

In the case of *Van Gend en Loos v. Nederlandse Administratie der Belastingen* (1963), the justices maintained that law promulgated in the name of the Community

*not only impose obligations on individuals but is also intended to confer upon them rights which become part of their legal heritage. These rights arise not only where they are expressly granted by the Treaty, but also by reason of obligations which the Treaty imposes in a clearly defined way upon individuals as well as upon member states and upon the institutions of the EEC.*<sup>27</sup>

In short, a member state need not have recognized a particular provision of EC law in order for its citizens to claim protection and rights secured under that provision.

In the verdict of *Costa v. ENEL* (1964), the Court held that law generated by the



Community "could not, because of its special and original nature, be overridden by domestic legal provisions, however framed, without being deprived of its character as Community law and without legal basis of the Community itself being called into question."<sup>28</sup> Insofar as **regulations** issued by the Council of Ministers are more detailed as a rule, there is less need to pursue an individual course of action--one reason why most policy guidelines regarding equality tend to assume another form.

Within a few years Belgian women began to put Article 119 to the test. In the Hersat region of Belgium, women employed in the defense industry went on strike for several weeks to protest pay discrimination. When their claims were rejected at the national level, they appealed to the European Court on the basis of Art. 119, and won a substantive right to equal pay in 1966. The first COJ case involving an individual's charge of pay discrimination was filed by **Gabrielle Defrenne**, a stewardess for SABENA Airlines who had been compelled to terminate her flying career upon turning 40--a condition not required of men. She sought judgment from the European Court in 1968 in reference to her subsequent ground-job which paid significantly less than in-air service. The Court required the payment of damages and equal pay for the alternative position; the judges denied the claim that she was entitled to a higher pension in order to compensate losses incurred through displacement, however.

It was not until the second Defrenne case of 1976 that Article 119 turned into "real law," that is, was construed as directly effective and hence binding on all member-states. Any person residing within EC boundaries can now pursue a case against unequal pay in her/his national court. The case of *McCarthy LTD. v. Smith* further expanded the framework for individual standing in finding that a female complainant need not supply as evidence a man in comparable

circumstances, i.e., employed at exactly same time. Last but not least, another significant legal victory was scored in the verdict of May 17, 1990, involving *Douglas Harvey Barber v. Guardian Royal Exchange Assurance Group*. The European justices were called upon to deliver a preliminary ruling in which they maintained that occupational pensions are to be considered an integral component of worker remuneration: *ergo*, they henceforth fall within the scope and reach of Art. 119TR.

The power to outline a preemptive or **preliminary ruling** set down in Article 177 of the Rome Treaty, combined with doctrine of **direct effect**, extends the Court's, and therewith the Community's power to challenge "purely private--that is, nongovernmental--actions that violate the treaties."<sup>29</sup> Described by Shapiro as the "forward-thrusting element of the Community," the Court of Justice has ruled that obligations specified in the 1957 Treaty "directly bind private citizens and enterprises of member states. Thus, in the course of regular lawsuits in national courts, individuals may claim their legal rights under those treaty provisions. . . ."<sup>30</sup> Insofar as all COJ verdicts are considered binding, there exists no further right of appeal.

The still-evolving doctrine of **mutual recognition**, first enunciated in the *Cassis de Dijon* verdict of 1979, requires that "receiving nations" accept the standards of the "producing nation." In the broader context of the Single European Act, the goal of **harmonization** requires that each state admit the product of the other, suggesting that whichever state has the lowest standards might eventually prevail. While critics have argued that mutual recognition might have the effect of inciting a "race to the bottom," the COJ has already been successful in blocking the least-common-denominator approach in the realm of environmental policy. It has also made clear that it will not apply the recognition principle in cases of "overt discrimination."<sup>31</sup> The



construct has yet to be replaced or supplanted with a "best practice" orientation, however, which puts a new spin on the initial Danish "no" to Maastricht. In addition to upholding the most progressive legislation among the Twelve, Denmark evinces the highest rates of female participation in the top-levels of government and administration. Danish MEP Bodil Boserup had already observed in the early eighties that in contrast to conditions in her own country, equality directives fostered by the Commission "are thirty years out of date."<sup>32</sup> Why should Danish women settle for less?

The problem remains that many women lack easy access to comprehensible information regarding their legal status and rights as Community citizens. Analysts observe, for example, that women have not made sufficient legal use of the ETD (described below)--which may owe to the fact that a mere twenty percent of those filing suits secured favorable verdicts by way of tribunals during the first five years after its issuance.<sup>33</sup> Too many women are without the financial means to pursue a case, since most national systems of jurisprudence deny free legal aid to those in paid employment (this means, in *Catch-22* fashion, that lacking sufficient money to afford representation, women cannot fight against unequal pay). There is also a need for remedies which can be used to deter and rectify employer behavior, and perhaps to extend their application in the manner of U.S. class action suits. Until recently, suits frequently resulted in little more than symbolic compensation for the plaintiffs. The COJ initially maintained that penalties are not directly effective, compelling a reliance on national law--hence the so-called "postage stamp awards" which have prevailed in the FRG. In its verdict *Von Colson & Kamann v. Nordrhein-Westphalia* (1983)--the first German case of its kind--the European Court nonetheless found that sanctions must stand in relation to the amount of damage or harm caused: thus,



in addition to their so-called *Bewerbungskosten* (stamps and xeroxing), Colson and Kamann were awarded six months' worth of salary for having been passed over as the most qualified applicants--but they were not accorded the jobs they deserved as social workers in a Northern German prison.<sup>34</sup>

The experiences of the last two decades have highlighted the need for a further harmonization of legal systems and proceedings. Two existing models, Anglo-American style case-law and the system of codified or Roman law, afford differential access to would-be complainants in terms of "test cases" and the judiciary's ability to "fill in the gaps." The adversarial method favored in many states may prove too intimidating for would-be plaintiffs (especially in Britain, which engages in heavy foot-dragging more often than most). The need to secure evidence and to meet "burden of proof" requirements often takes a back seat to the other "double burden" potential complainants bear. A more appropriate model might be the inquisitorial system (Spain, the FRG) under which judges become responsible for seeking out the truth. Members of the European Parliament are pushing to have employers made accountable for maintaining detailed records on pay, training, promotion (according to race and gender categories).

Another stumbling block relates to the availability of suitable legal expertise. Discrimination law tends to be nationally subsumed under industrial relations law; few judges or lawyers are conversant in both fields, at the national and the EC level. In the case of *Price v. Civil Service Commission*, it was determined that age limits set for entry into the British civil service did not account for the realities of female biology (since much child-bearing/rearing activity is undertaken before the age of 28); the judge ultimately relied upon his personal experience in disqualifying the standard. There now exists a specialized network of experts who publish a

community newsletter through which lawyers in the member states can apprise themselves of pending directives, resolutions and final rulings directly or indirectly relevant to women.<sup>35</sup>

With regard to the precept of "**fundamental rights**," the Court of Justice has decreed that rights defined by the **European Convention on Human Rights** (ECHR) are likewise enforceable as European law. The definitional standard employed by the Court is . . . "inspired by the constitutional traditions common to the Member States," suggesting the COJ has now assigned itself the "free-roving role as practitioner of European comparative constitutional law."<sup>36</sup> One topic which seems to fall into the "fundamental rights" category has been heatedly debated in plenary sessions but will undoubtedly remain outside the purview of the Court, the Parliament and the Commission for some time to come, namely, reproductive freedom. Both Ireland and the Federal Republic differ substantially from other member-states in terms of their restrictions on abortion. The Irish Republic seeks and obtains regular social policy exemptions linked to this issue.

At its Strasbourg meeting of December 9, 1989 (one month after the collapse of the Berlin Wall), the ex officio European Council adopted a "**Community Charter on the Fundamental Social Rights of Workers**." The document explicitly states, "Equal treatment for men and women must be assured. Equal opportunities for men and women must be developed." There still exists a major gap between the public rhetoric and the *Realpolitik* of the national governments, however. In many respects it is difficult to fathom why leaders comprising the Council of Ministers engage in the disingenuous exercise of signing and approving so many charters, resolutions and directives which they have little inclination to implement.



#### IV. Expanding the Conceptual Framework for Legal Action

Since the mid-seventies the Commission has issued five Directives pertaining to gender equality which, according to the precepts outlined above, should have already compelled the national governments to take effective implementational action. Their contents can only be briefly summarized here.

##### ★ Equal Pay Directive (EPD 75/117) of 10. February 1975:

The first directive amounts to a more substantial reiteration of Article 119, mandating "equal pay for equal work." It gave member states one-half year to enact measures to achieve such, as well as as to devise methods which would protect female workers filing a job-related discrimination complaint. More than a decade after its promulgation, the directive appeared to fall quite short of its simple goal of warranting the same hourly wages for women and men. Women's salaries in Great Britain, which amounted to 77% of their male counterparts in 1977, dropped to 73% in 1980; in Ireland female employees saw their pay rise from 61% in 1975 to 68% by 1982. Italian women also witnessed an increase in their wages, from 79% to 87% of men's pay, respectively, while proportionate earnings in the FRG remained constant. The salaries of women in Sweden advanced from 85% to 93% of the male equivalent during the same interval.<sup>37</sup> Since employers and governments adhere only to the letter, not to the spirit of the law, the next problem the Commission saw fit to address was that of moving women out of lowest-paid job categories and occupations *per se*.

##### ★ Equal Treatment Directive (ETD 76/207) of 9. February 1976:

The ETD was a significant step in expanding the concept of equality beyond the limited question of pay actually received, although "unequal treatment" remained tied to the situation of women-

at-work. The 1976 Directive not only sought to broaden access to occupations, training and promotion but also to lay a foundation for addressing the work environment, e.g. complaints of sexual harassment. Member-states were given 30 months to meet its main objectives (until 1981 for Greece, but the deadline was extended several times beyond its accession date). Both the West German and Italian governments argued that their constitutional guarantees of equality sufficed as implementational legislation, although neither state had fully operationalized those provisions at home. [The Kohl government is fond of arguing that the state cannot engage in "positive action" or preferential hiring because the constitution prohibits "reverse discrimination"--hence it must protect the "equality" of men.] When the Commission threatened to initiate infringement proceedings, the FRG sought to limit its application to the private sector.<sup>38</sup> Officials in the Netherlands and Denmark sought to circumvent the Directive's requirements linguistically, i.e., by utilizing the term "like work" in their national statutes.

Article 2(1) added another dimension to the ETD mandate by introducing references to "direct" and "indirect" inequality; most implementing legislation at the domestic level has failed to incorporate the effects of **indirect discrimination**. The grounds for excluding women from specific jobs are not subject to a uniform list of objective criteria, hence much is left to the discretion of the employer [Art. 2(3) does allow for exclusions or "positive discrimination" with regard to protection during pregnancy and maternity]. Article 6 obliged member-states to establish a system of legal redress for employers. Cases subsequently based on the ETD paid damages to those facing discrimination or dismissal but did not compel hiring or reinstatement; the "burden of proof" at this point continued to rest with the woman alleging unequal treatment (this was modified in 1988). The first report assessing the ETD's impact was made public in



1981, compiled from questionnaires to governments, employers' associations and workers' organizations. The authors found that all sets of actors had been sorely negligent and that their efforts to implement the Directive remained woefully inadequate.

Individual articles in both the 1975 and 1976 directives obliged member-states to nullify all existing collective agreements, laws and regulations which are explicitly discriminatory (e.g. "head of household" allowances paid only to husbands). Both likewise outlawed "victimization," though this was applied only to actual dismissal; neither directive afforded protection for colleagues who might be called as witnesses. At a minimum these Directives induced all member governments to establish some national oversight body on women's rights. As the individuals interviewed by this author attested in May 1992, however, national leaders should not rely on these bodies to do all their work, since they are typically understaffed, underfunded and usually outside the mainstream of portfolio positions. The member-states have characteristically evinced "a distinct lack of political will towards equality."<sup>39</sup>

The directives are limited to the extent that they do not offer sufficient conceptual clarity nor ensure adequate enforcement devices: they mandate only that "effective means" are to be made available. Their combined effect has nonetheless been to secure recognition of the fact that "equality at work" can only be guaranteed for women if they are also treated equally with regard to the separate but related spheres of education, training, hiring, promotion and retirement. Consideration must be given to the structure as well as the content of work.

**★ Social Security Directive (SSD 79/7) of 19. December 1978:**

Experiences with the earlier directives brought the realization that equal treatment must include "equal pay" in the realm of social security (for illness, accident, disability, old age, unemploy-

ment, and welfare aid). Hence "positive discrimination" is an attempt to have the years devoted to child-bearing and rearing included in the calculation of one's "contributions," especially for women seeking to re-enter the paid labor force. A draft directive issued later has attempted to advance the concept of parental leave, renounced by the European Employers' Union as "institutionalised absenteeism."<sup>40</sup> At the time of its introduction, the SSD was to apply only to statutory programs (not occupational or supplementary employer-provided schemes), since the COJ had excluded social security as component of "equal pay" in the 1971 Defrenne case. The Commissioners allowed six years for implementation, in view of the extraordinary diversity seen to exist with respect to national programs. With the onset of recession, equality proponents have recognized a pressing need to safeguard a complex web of cumulative benefits. In an age of "cutback management," women tend to rely more heavily on social security benefits than men, as a function of existing wage inequalities--and their biological durability (women, on average, outlive men by 6-8 years).

**★ Directive 86/378 of 24. July 1986:**

Reflecting intervening Court of Justice rulings, this directive addressed equal treatment with respect to occupational, that is, voluntary or self-imposed social security schemes offered by employers. It mandates equality with regard to the application of firm-specific social benefits (e.g. supplemental pensions) in principle, though it allows for exceptions in case of part-time workers (90% of whom are female).

**★ Directive 86/613 of 11. December 1986:**

This add-on directive mandates the equal treatment of women and men in the self-employed or "independent" sectors, including agriculture. Regardless of enterprise size, employers are



henceforth required to meet the same standards of equal treatment as applied to employed women in other sectors, including protection for pregnancy and motherhood.

National governments used the recession of the 1980s as a justification for not proceeding further with the effective implementation of women's rights. The "freeze" on advances derived in part from the need for a unanimous vote on matters affecting important "national interest." The Court of Justice has thus far refused to determine whether the three main Directives on Equality are "directly effective." Their dubious commitment to gender equality notwithstanding, the leaders of the member-states have approved a number of more or less symbolic gestures over the last several years.

**The Council Resolution of 13. December 1984 on "The Dignity of Women and Men"** at work opens the door to a reassessment of the "work environment." The issue focus has been expanded to include indirect patterns of discrimination or forms of unequal treatment such as sexual harrassment. A 1988 study found that 34% of the Walloon women and 30% of their Flemish counterparts believed they had experienced sexual harassment in Belgium; the figures were 84% for Spain, 58% in the Netherlands, 51% for Britain, and 22% in Northern Ireland (despite the small number of women in paid employment there). A whopping 59% of the secretaries in the FRG claimed to have been thus harassed [*belästigt*] at work.<sup>41</sup>

National leaders moreover signed on to the **Council Resolution of 7 May 1984** pertaining to female unemployment. That year the Commissioners began seeking action on benefits in conjunction with part-time work; together with active MEPs they are trying to establish the precept that rights to social security are essentially "indivisible," meaning they should at least be proportional to the amount of time worked. A third important gesture has been the **Council**

**Resolution of 12. December 1988**, treating occupational reintegration or late integration of women into the paid work force.<sup>42</sup>

Mindful that its Directives lack the clout of unanimous decisions at the Ministerial level, the Commission has taken important steps intended to educate national leaders with regard to a wide array of implementational strategies and mechanisms. Foremost among these have been its three multi-year "Action Programs." The **Social Action Program of 1975** had many of the qualities of a public relations ploy, having been introduced at a time when feminist groups were on the march throughout the West and interest in European integration had paled considerably. The focus on women (during the UN Decade of Women) seemed to add a "human face" to what was perceived to be "an industrialists' club with no interest in social conditions or the plight of the weak and disadvantaged."<sup>43</sup> It accompanied a Council Resolution of 1974 as an expression of "political will to achieve equality in employment and training" which, in turn, generated a memorandum on "Equal Treatment for Male and Female Workers" in February 1975.<sup>44</sup>

Its successor, the **Community Action Program on the Promotion of Equal Opportunity for Women, 1982-1985** sought to strengthen the individual rights of the European citizeness. It emphasized "positive action" as an antidote to indirect discrimination, undertook to assess progress towards occupational desegregation. Finding that it had been quite limited, this program highlighted the need for more action in the political, social and industrial spheres.

Initial reactions on the part of the national governments were "predictably cool;" the Council of Ministers has resisted efforts to establish common regulations in most of the areas covered in this program. Britain, the Federal Republic and the Netherlands insisted that the "promises" for action be replaced by notes undermining the allocation of financial resources.



The interim report of January 1984 was unabashedly pessimistic. It noted a general reluctance on the part of employers to initiate special training programs for women, reinforced by official notions (reflecting a dearth of women in these positions) that "hard times" impose other priorities.<sup>45</sup> In short, women's rights are viewed as relative, only to be pursued in times of plenty. (One could argue that certain actions, such as phrasing job advertisements in non-sexist terms, are in fact low-cost actions with high pay-offs.)

The second or **Medium Term Community Programme, 1986-1990** aimed to consolidate the legal rights of individuals, while using "positive action" to target non-legal barriers to equal opportunity. A 1990 evaluation study compared the role of national measures with the promotion of positive actions by the Commission itself. The authors admitted, "At the outset, it must be said that the situation is not a promising one."<sup>46</sup> The program urged employers to adopt a "better use of human resources," in light of observable demographic trends. The "human resources" approach seeks to redefine the key question posed by employers from "why should we?" to "how can we?" train and employ women more effectively. Its recommendations derived from an investigation of actual company practices and experiences with personnel management.<sup>47</sup> The purpose has been to rectify asymmetries of the labor market at the management level, which run parallel to the unequal representation of women throughout the organs of national governance.

The most recent or **Third Medium-term Action Program, "Equal Opportunities for Men and Women," 1991-1995** outlines three specific objectives: 1) to consolidate measures and capitalize on Community experiences thus far ("synergy" and multiplier-effect); 2) to introduce new initiatives in the areas of employment and vocational training which are sensitive to

structural problems in less developed areas; and 3) to reinforce and supplement developing partnerships among actors inside and outside the EC organs, e.g. at local and regional levels, as a reflection of the post-SEA emphasis on *subsidiarity*. It further aims to add substance to the tenet of "work of equal value," by studying payment systems, expanding the material scope of law, pursuing more effective monitoring of legal developments in member states, by impelling members to find collective means of redress, and promoting training in Community law.

At another level, the new program aims to bring more women into the paid labor market, while enhancing the quality of their jobs through better career counseling and training. It hopes to reduce barriers through positive action and measures to allow reconciliation of work and family life, for both parents. It foresees Community contributions (through the Structural Funds) to infrastructure, e.g., child care facilities. Other goals include the changing of enterprise culture, fostering small businesses, women's cooperatives and transnational partnerships, systematic collection of data, and the mobilization of member-states and the "social partners" (emphasizing a **"policy of partnership"**). It cites the need for consciousness-raising among targeted segments of the public, ranging from local, national and regional decision-makers to employers, trade unions, the legal and teaching professions, the media, and nationally based political parties.

As this telegraphic review of directives and action programs demonstrates, both the European Commission and the European Parliament have accorded equality issues a prominent place on their respective agendas. The action programs moreover reflect the positive impetus provided by the European Court's deliberations in this area. The chief stumbling block to implementation was, and remains, a lack of political will on the part of national governments,



whose power is vested in the Council of Ministers. The question is whether the changes foreseen by the Single European Act and the Maastricht Treaty will induce a significant redistribution of power among the policy-making organs of the Community as a whole.

## **V. Women, the Market and Maastricht**

In addition to actions which have been undertaken in an official capacity, the Community has witnessed an impressive amount of self-mobilization over the last decade. Its organizational offshoots range from the Women's Employment Bureau, the Women's Information Bureau and the Center for Research on European Women (CREW), to the Women in Employment Network created in 1983. Emerging within the framework of the Second Action Programme are the Network on "the Diversification of Occupational Choices," the Network for Positive Action in the Private Sector, the Working Group on Higher Levels of the Public Service, the Steering Committee on Equal Opportunities in Broadcasting and Television, and the IRIS Network (a network of vocational training programs formed in 1988), *inter alia*. The Commission has also sponsored formation of a Childcare Network, a Network for Local Employment Initiatives (ILE), and the Action Research Program on Equal Opportunities in Teacher Training (TENET). The Initiative NOW (New Opportunities for Women) was allocated 120 Million ECU for 1991-93. One result of all this organizational activity has been the compilation of a formidable set of data-banks on a wide array of occupational fields and pilot programs. The DG-V has sponsored many specialized studies in an effort to persuade member-states of the inadequacy of existing national laws, as well as to facilitate contacts between "social partners" and among the initiatives themselves.<sup>48</sup>

Analysts point to at least five areas in which women are likely to be affected immediately

by the implementation of the SEA: 1) through the restructuring of a wide variety of industrial branches and service sectors; 2) with regard to the creation of a transnational core of social rights; 3) in regards to mobility and residency rights (there is a certain danger that this provision will divide women as well as men into two classes, EC nationals and non-EC members); 4) in reference to matters of health, hygiene and occupational safety, based on harmonization of norms (although the issue of "special protection," e.g. bans on night work, have not yet been resolved); and 5) with regard to the meaning of "equality" *per se*.<sup>49</sup>

The Council Resolution of 21. May 1991 decreed that "women must be in a position to benefit on equal terms from the achievement of the single market and to contribute fully to such achievement." At best, the Council "INVITES THE MEMBER STATES [that is, its own delegates!] to implement the relevant measures" and "INVITES BOTH SIDES OF INDUSTRY [my emphasis] to make equal opportunities and equal treatment an element in collective bargaining, in particular by endeavouring to implement positive action programmes in occupational branches and sectors as part of a cohesive policy of staff management." Whether the Council sees fit to accept its own invitation will depend in part on the extent to which equality issues can henceforth be decided on the basis of majority rule.

The Single European Act, ratified in 1987 and implemented as of January 1, 1993, has opened the door to a more extensive use of the qualified majority vote. The recent addition of Article 118A to the 1957 Rome treaty subjects questions regarding the "world of work" to majority decision-making. Although the exact parameters have not yet been defined, it nonetheless upholds "the rights/interests of employers" under the unanimity principle. Article 100 A will permit the use of the qualified majority for questions affecting the realization of the



single unified market. It is not yet clear how this will impinge on the material rights of workers and employers.

Frequently cited as the heart of the SEA, Article 8a seeks to propel the common market towards a commercial realm without internal frontiers, symbolized by the free flow of goods, personnel, services and capital. At least one important qualification exists with regard to the free movement of persons, however--to date, the Act provides no independent residency rights for *mitziehenden* family members of the employed party, for example, in case of a spouses' death or in the event of divorce.<sup>50</sup> There are many loopholes and gaps with regard to the transfer of relevant social benefits, e.g. the counting of child-rearing years for determining supplemental pensions. Likewise unresolved is the harmonization of internal taxation structures (consider the inequities of *Ehegattensplitting* in the FRG, for example); some would argue that the state's ability to generate revenues for its own needs strikes at the heart of national sovereignty. The full benefits of mobility will undoubtedly accrue to those who possess the highest level of professional qualifications--women will have to play catch-up for many years to come.

Experts predict that women will be less affected by restructuring in the industrial sectors, where they comprised only 20% of the gainfully employed in 1987 (men, 42%); they will be dramatically affected by efforts to rationalize the service sector, however, which provides jobs for 73% of their number.<sup>51</sup> It would be incorrect to attribute all of these trends to the ratification of the SEA itself. The Act has not caused, only accelerated industrial changes already underway, for example, the increasing employer reliance on "atypical" forms of employment.<sup>52</sup>

Between 1979 and 1982, the number of registered unemployed in Western Europe rose

from six million to eleven million; women accounted for two and three-fourths million in 1979, for some four and one-half million of the jobless by 1982. Comprising 35.9% of those engaged in paid labor in the late seventies, they represented 41.8% of those lacking (yet actively seeking) jobs; as their share rose to 36.8% of earning populace in 1980, women came to account for 45% of the registered unemployed (see Table 5).<sup>53</sup> According to the Community's own studies, women experienced a greater percentage increase than men with respect to entry into the paid labor force between 1982 and 1987, albeit mostly in part-time or non-secure positions; 70% of those entrants were concentrated in the service sector.

Out of the EC's total population, over 70 million are women in their child-bearing years, aged 15-44; an additional 40 million are children under the age of 10 (36% are under 4 years old in the FRG, in the Netherlands, 25%, in Denmark 74% are under 7). The phenomenon of part-time work sustains a gendered division of labor for women as a whole but at least it helps to ease the "double"--more accurately, "triple" burden for the individual employee. Only a significant reduction or restructuring of the "normal working day," coupled with more than symbolic parental leave options will function to remedy the former. At present major variations persist among the member-states regarding the minimum number of hours which must be worked in order to qualify for standard benefits, ranging from zero hours in Spain, to 18 hours per week in the FRG.

According to medium-term projections, the liberalization of the EC market is expected to generate a minimum of 1,800,000 jobs throughout the member-states.<sup>54</sup> Those worried about the possible replacement of national monopolies by European oligopolies argue that the goal of enhancing regional "competitiveness" cannot be attained without incurring the risk of de-



classification for select segments of the labor force. At the present time many equality advocates within the Community are skeptical that the SEA will provide short-term or medium-term payoffs for women. Many fear that trends towards new forms of "homework," coupled with an increasing emphasis on the "flexibility" inherent in part-time work (to the benefit of employers) will re-establish and reinforce workplace segregation and segmentation. Although these strategies are being adopted in name of "new technologies," the reality is that the tasks assigned to women will continue to fall into the low-wage, routine "processing" (as opposed to decision-making) category. Let us consider changes predicted for the banking and textile industries.

Mounting competition brings increased risk to European financial markets which, in turn, will place new emphasis on bank profitability, at least one set of analysts argues. One likely outcome will be an effort to squeeze production costs by replacing the variable human with reliable new technologies (e.g., electronic banking, telecom marketing and automatic teller machines). With the exceptions of Italy, Portugal and Spain, the banking sector tends to be more heavily "feminized" than other branches of the economy (this also holds true for former socialist states, totaling 90% in the no longer real-existing GDR).<sup>55</sup> Prior to 1988, the banking sector was not a major utilizer of either part-time or temporary labor (see Figure 6). The experts on "Women in Employment"

*are pessimistic as to the future of employment volume in the banking sector, and this pessimism is deeper for the long term than the short term when only slower growth is forecast. . . . The so-called traditional functions, mainly administrative tasks, will be sacrificed in favor of functions such as commercial activities and customer counseling.*

*The qualification level of banking employment will rise. . . . Women are up to now underrepresented in the areas that are headed for expansion. By contrast, they account for a majority of the staff in areas where extensive rationalisation measures will take place . . . it is important that a "positive discrimination" policy be pursued in this area, for instance in collective agreements.<sup>56</sup>*

New technologies may see growing numbers of women creating their own businesses, but the latter introduces its own class of economic insecurities.

Ranked second in size only to the United States, the Community's textile and clothing market currently accounts for 34% of the world clothing exports, against 42 % of the world clothing imports.<sup>57</sup> The preferred restructuring *qua* cost-cutting strategy in textiles lies in "reducing as much as possible wage share in production costs through introduction of automation," a trend not as pronounced in the clothing market where consumer interest in quality often outweighs price concerns (see Table 7).<sup>58</sup> Part-time work is more prevalent among women than men (the latter make up at most 15% of the total) in both sectors, and the clothing industry serves as the top provider of domestically based labor. It accounts for 10% of all homeworkers in the Netherlands, for instance, where female wages in clothing only reach 59% of the male wages (not including an estimated 6,000 in underground or sweatshop operations).<sup>59</sup>

A high level of product differentiation makes it difficult to predict the overall impact of the open market on female textile workers in the member states. Table 8 attempts to sketch the types of restructuring likely to occur. At a minimum it can be argued that these sectors will prove increasingly vulnerable to low-wage competition from lesser developed countries.



## VI. Deepening and Democratization after Maastricht

The actors most committed to advancing the cause of European political integration and the internal democratization of the Community are those who have contributed most to putting women's rights on the European agenda. Correspondingly, those member-states most intent on preserving "national sovereignty" or protecting "national interests" have served as the greatest impediments to that process, viz., the United Kingdom and, somewhat paradoxically, the Federal Republic of Germany. Surprisingly, lesser developed countries have taken big steps forward thanks to the equality directives and initiatives, notably Ireland and Greece with regard to pay issues--although abortion remains a touchy subject. Spain and Portugal are only ones to have incorporated a "parental right" to reduced hours into their part-time employment laws.<sup>60</sup> This author has yet to review exit polls connected with the Danish referenda--but it is conceivable that women might have differed from men in their reasons for rejecting the idea of European political union in this regard.

Instruments and conceptual frameworks developed to date promise to become a significant antidote to the immobilism of national governments in regard to gender equality questions. In the short run, a brake on national action is the realization that change costs money; but the very existence of a law can change attitudes which eventually induces changes in behavior. It is to be hoped that the industrial interplay of "positive action" and the "human resources approach," on the one hand, and business' self-interested promotion of the open market under the Single European Act, on the other, will produce its own multiplier-effect--adding substance to Vallance and Davies' conclusion that "*Europe is good news for women.*"<sup>61</sup>

Thus far, the strongest and "most consistent champion of women's rights" has been the

directly elected EP itself, thus an enhancement of its powers and proportional increases in the number of female delegates will ultimately serve the equality cause. Created in 1987, the European Women's Lobby, under the direction of Barbara Helfferich, has scheduled a concerted pro-women campaign for the fall EP elections in 1994. This electoral united front may help many women, and men, to overcome the long-standing perception that the EC is a bureaucratic monolith "that doesn't affect my life."<sup>62</sup> It is abundantly clear that women alone cannot make the difference, or more accurately, eliminate unequal treatment based on "difference."

Yet the real problem for the women of Europe (as well as for women on this side of the Atlantic)

*probably lies not so much in the small number of men who are overtly hostile [and I hope all the male members of this audience take this to heart] but in the great majority who are apathetic. They may not make sexist remarks, it is no longer socially or politically acceptable to do so, but they will not put themselves out to support women's rights, or to help their female colleagues to do so.*<sup>63</sup>

Equality is not a once-and-for all affair. To state that, of course, one believes in equality (often couched in references to one's working spouse and/or daughter) is "simply the political equivalent of being against sin." National governments and community institutions must also deliver financial means along with the Sunday speeches. Although strong, intellectually independent, politically self-motivated persons of my ilk may hate to admit it, hard times are exactly the occasions when women require the enlightened support of men the most.



## Endnotes

1. Elizabeth Vallance and Elizabeth Davies, *Women of Europe. Women MEP's and equality policy*, Cambridge/London/New York: Cambridge University Press, 1986.
2. *Women in Statistics*, Women of Europe supplements, No. 30, December 1989, published by the Women's Information Service; also, Vallance and Davies, *loc.cit.*, p. 7.
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4. For a broad sampling, see *inter alia*, Joni Lovenduski, *Women and European Politics. Contemporary Feminism and Public Policy*, Amherst: University of Massachusetts Press, 1986; Lois Lovelace Duke, *Women in Politics. Outsiders or Insiders?*, Englewood Cliffs, NJ: Prentice Hall, 1993; Virginia Shapiro, *The Political Integration of Women*, Chicago: University of Illinois Press, 1983; and Council for the Status of Women: *Women--Partners in Policy-Making: Regional, National and European Perspectives*, Dublin: CSW, 1992.
5. Vallance and Davies, *op. cit.*, p. 42.
6. Vallance and Davies, *op. cit.*, p. 43.
7. *Ibid.*, p. 57.
8. *Ibid.*, p. 8.
9. *Ibid.*, p. 65.
10. Vernon Bogdanor, cited in Vallance and Davies, *op. cit.*, p. 12.
11. The figures for 1984 regarding the share of female mandates were: the Rainbow Group, 25% (5 MEPs); the Communist Group, 21% (9); the European Democratic Alliance, 20% (6); the Socialist Group, 20% (27); the Liberal and Democratic Group, 19% (6); the European Democratic Group, 16% (8); and the European People's Party, 12% (13).
12. *Ibid.*, p. 1, p. 49.
13. Cited in Vallance and Davies, p. 73.
14. The Treaty of Rome, as cited in Vallance and Davies, *op. cit.*, p. 88.
15. Vallance and Davies, *op. cit.*, p. 74.

16. Vallance and Davies, pp. 66-67. Also, Sabine de Bethune, ed., *PANORAMA, Statistical data concerning the participation of women in political and public decision-making*, published under the auspices of the European Network "Women in decision-Making," Brussels, 1992.
17. B. Guy Peters, "Bureaucratic Politics and the Institutions of the European Community," in Alberta M. Sbragia, ed., *Euro-Politics. Institutions and Policy-Making in the "New" European Community*, Washington, D.C.: Brookings Institution, 1991, p. 91.
18. Figures derive from a self-study cited in Vallance and Davies, *op. cit.*, p. 143.
19. Vallance and Davies, *op. cit.*, p. 24.
20. Vallance and Davies, *op. cit.*, p. 79.
21. As reported by Vallance and Davies, *op. cit.*, p. 79.
22. Cited in Vallance and Davies, *op. cit.*, p. 31.
23. Dipak Nandy (UK), cited in Vallance and Davies, *op. cit.*, p. 112.
24. This is a theme reflected in a number of studies concerning female employment in specific sectors of the labor market. See further, Vallance and Davies, *op. cit.*, p. 87.
25. Owing to time and space constraints I have focused on a small but hopefully representative sample of COJ verdicts which have served to redefine the legal landscape. Other verdicts which have also taken on a "landmark" quality are: *Bilka Kaufhaus vs. Karin Weber von Herz*, Case 170/1984; *J. P. Jenkins vs. Kingsgate*, Case 96/1980; *Ingrid Rinner-Kühn versus FWW Spezial-Gebäudereinigung GmbH & Co.*, KG Case 171/1988; *Jenkins v/ Lingsgate LTD*; *Garland v. British Rail*; and *Burton v. British Rail*.
26. Cited in Vallance and Davies, *op. cit.*, p. 21.
27. Cited in Vallance and Davies, *op. cit.*, p. 90.
28. Also cited by Vallance and Davies, *op. cit.*, p. 89.
29. Martin Shapiro, "The European Court of Justice," in Sbragia, *op. cit.*, p. 127.
30. *Ibid.*, p. 127.
31. Shapiro, *loc. cit.*, p. 140, p. 132.
32. Cited in Vallance and Davies, *op. cit.*, p. 113.
33. Vallance and Davies, *op. cit.*, p. 122.



34. Hortense Hörburger, *Europas Frauen fordern mehr. Die soziale Dimension des EG-Binnenmarktes am Beispiel der spezifischen Auswirkungen von Frauen*, Marburg: SP Verlag, 1990, p. 30.
35. The *Law Network Newsletter* is published by the Directorate-General on Employment, Industrial Relations and Social Affairs in Brussels. See further the Report of the European Conference held in Louvain-la-Neuve, Belgium 30. September to 3. October 1992, *Summary of the Judgments of the Court of Justice of the European Communities 1987-1992*, published by the Commission of the European Communities and the Catholic University of Louvain.
36. Shapiro, *op. cit.*, p. 148-149.
37. Cited in Vallance and Davies, *op. cit.*, p. 119-20.
38. Vallance and Davies, *op. cit.*, p. 93.
39. This is a repeated theme in the work by Vallance and Davies, *op. cit.*, p. 100.
40. Cited in Vallance and Davies, *op. cit.*, p. 138;
41. Michael Rubenstein, *The Dignity of Women at Work. A report on the Problem of Sexual Harassment in the Member States of the European Communities*, Brussels 1988.
42. The status of women in the member-states has also been indirectly affected by the Council's February 14, 1975 resolution regarding mass layoffs, its February 17, 1977 resolution on corporate take-overs, the resolution of October 20, 1980 related to insolvency or bankruptcy, and a 1984 resolution of educational and/or parental leave.
43. Vallance and Davies, *op. cit.*, p. 75.
44. *Ibid.*, p. 74.
45. Vallance and Davies, *op. cit.*, p. 128.
46. Directorate-General for Employment, Industrial Relations and Social Affairs, *An Evaluation Study of Positive Action in Favor of Women*, Commission of the European Communities: Brussels, 1990.
47. One study attempted to sample 2,700 individuals and 28 companies, although the rate of valid responses was less than 13% (n=346). See Evelyne Serdjenian, *12 European Programmes for Equal Opportunities*, Brussels, 1990. The author solicited copies of positive action programs implemented by public and private employers in the individual member states; the report incorporates programs and internal evaluations submitted by employers as diverse as ranging from IBM Germany, Electricite et Gaz de France, Rasio Telefis Eireann (Ireland), Telecommunicatie PPT (Netherlands), and the National Westminster Bank (UK).



48. See, Caroline Turner, *Women's Local Employment Initiatives in the European Community*, Brussels, 1989. Also, Caroline Turner, *Guide to Support for Women's Employment Initiatives in the Member-States of the European Economic Community*, Brussels, July 1990; Jane Millar, *The Socio-Economic Situation of Solo Women in Europe*, Revised Final Report to the European Commission, Brussels, 1991; Dina Vaiou, Zoe Georgiou and Maria Stratigaki et al., *Women of the South in European Integration: Problems and Prospects*, Brussels, October 1991; Monique Halpern, *Protective Measures and the Activities not Falling Within the Field of Application of the Directive on Equal Treatment--Analysis and Proposals*, Brussels, 1982; Ogilvy Adams & Rinehart (Consultants) *Positive Action Network--Motivating Factors, Obstacles and Guidelines*, 1988. On training, see CREW, *Women's Training in New Qualifications: Models and Transferability*, Brussels, 1991; further, Frederique Deroure, *Accompanying Measures in Women's Training--Vocational Training for Women*, Brussels, June 1990; Monique Chalude, with Margaretha Lisein-Norman, *The Re-Insertion of Women in Working Life: Initiatives and Problems*, Brussels, 1986; Rosemary Crompton, Linda Hantrais, et al., *Women in Professional Occupations in France and Britain*, Brussels, September 1990; Evelyne Sullerot, coordinator, *Diversification of Vocational Choices for Young and Adult Women*, Final Consolidation Report, 1987; and Jill Rubery and Colette Fagan, *Occupational Segregation amongst Women and Men in the European Community*, Brussels, October 1992. For a treatment of women's increasing political influence, see Margaret Page, *Women Change Decisions--Final Report on "Women, decision-making and local strategies: Some Comparisons between Italy and the UK"*, November 1992; Sabine de Bethune, coordinator, *"Panorama" Statistical Data concerning the participation of women in political and public decision-making*, Brussels, November 1992.

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Ferdinand von Prondzynski, *Implementation of the Equality Directives*, July 1987; ER Consultants, *An Evaluation Study of Positive Action in Favour of Women*, Brussels, 1990

See further, Linda Luckhaus and Lorraine Fletcher, *EC Specialist Workshop on Social Security, Equality and Community Law*, Report of the Proceedings, University of Warwick, April 18-19, 1991.

49. For a detailed treatment of the social-policy ramifications of the open market, see Hortense Hörburger, *Europas Frauen fordern mehr*, *op. cit.*

50. Hortense Hoerburger, *op. cit.*, p. 12ff.

51. See the Introduction by Ilse Brusis, and Hoerburger, *op. cit.*, p. 8, p. 22.

52. Hoerburger, *ibid.*, p. 41.

53. Vallance and Davies, *op. cit.*, p. 123.

54. Francois Jortay, Daniele Meulders and Robert Plasman, *Evaluation of the Impact of the Single Market's Completion on Women's Employment in the Banking Sector*, Synthesis Report, Brussels, 1991, p. i.



55. Jortay *et al.*, p. 37.
56. *Ibid.*, p. 96.
57. Daniele Meulders and Olivier Plasman, *The Impact of the Single Market on Women's Employment in the Textile and Clothing Industry*, Brussels, 1991, p. 19.
58. *Ibid.*, p. 27.
59. Meukders and Plasman, *ibid.*, pp. 50-52.
60. Hoerbürger, *op. cit.*, p. 55.
61. Vallance and Davies, *op. cit.*, p. 114.
62. Ailbhe Smyth, with Anne Roche, *Strategies pour la Promotion des Femmes en Politique*.
63. Vallance and Davies, *op. cit.*, p. 63.