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EUROPEAN  
UNION SERIES

# GENDER AND THE EUROPEAN UNION

Johanna Kantola



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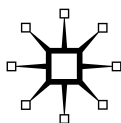
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# **Gender and the European Union**

**Johanna Kantola**

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# List of Abbreviations

ALDE	Alliance of Liberals and Democrats for Europe
CATW	Coalition Against Trafficking in Women
CEDAW	Convention on the Elimination of Discrimination Against Women
CEEC	Central and Eastern European Countries
CFSP	Common Foreign and Security Policy
COPA	Committee of Agricultural Organizations
DG	Directorate-General
DG V	Directorate-General on Employment, Social Affairs and Equal Opportunities
ECHR	European Court of Human Rights
ECJ	European Court of Justice
ED	European Democrats
EDF	European Disability Forum
EEA	European Economic Area
EES	European Employment Strategy
EHRC	Equality and Human Rights Commission
ENAR	European Network Against Racism
EIGE	European Institute for Gender Equality
ENOW	European Network of Women
EOC	Equal Opportunities Commission
EOU	Equal Opportunities Unit
EP	European Parliament
EPACVAW	European Policy Action Centre on Violence Against Women
EPP	European People's Party
EPWS	European Platform of Women Scientists
ERRC	European Roma Rights Center
ESF	European Social Fund
ETUC	European Trade Union Confederation
EU	European Union
EWLA	European Women Lawyers Association
FEMM	Committee on Women's Rights and Gender Equality
FRA	Fundamental Rights Agency

GUE/NGL	European United Left/ Nordic Green Left
G/FRA	Greens and the European Free Alliance
ILGA	International Lesbian and Gay Association
ILO	International Labour Organization
IND/DEM	Independence and Democracy
JHA	Justice and Home Affairs
MEP	Member of European Parliament
NAP	National Action Plan
NGO	Non-governmental organization
NOW	New Opportunities for Women
NPM	New Public Management
IOM	International Organization for Migration
IPS	Public Service International
OECD	Organisation for Economic Cooperation and Development
OMC	Open Method of Co-ordination
OSCE	Organization for Security and Co-operation in Europe
PES	Socialist Party Group
PPE	European People's Party
TAN	Transnational Advocacy Network
UEN	Union for a Europe Nations
UK	United Kingdom
UN	United Nations
US	United States
WAVE	Women Against Violence Europe
WHO	World Health Organization
WID	Women in Development
WIDE	Women in Development Europe
WOE	Women's Organization for Equality

# Acknowledgements

For the past three years when colleagues have asked me: “What are you working on?” I have replied “A book on gender and the EU.” Several times this reply has made mainstream political scientists laugh: “What does gender have to do with the EU?” On one hand, the book is written for those who are unaware of the complex ways in which gendered power structures underpin EU institutions and discourses and inform and construct policies and actors in the EU and member states. It aims to be an accessible text on the key issues that a gender perspective raises in relation to the EU. On the other hand, the vastness of research in this field comes as no surprise to feminist scholars. Here the problem is rather the scattered nature of this research, its spread into various journals, journal special issues, and chapters in edited volumes. For those aware of this diversity and perhaps daunted by it, the aim of this book is to pull the literature together, present the diversity of perspectives and consider issues that often remain separate in conjunction with one another, and thereby shed some analytical light on the big picture of “gender and the EU”.

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JOHANNA KANTOLA

*Also by Johanna Kantola*

FEMINISTS THEORIZE THE STATE

CHANGING STATE FEMINISM (*edited with Joyce Outshoorn*)

# Introducing Gender and the European Union

The family portraits of the leaders of the European Union (EU) are familiar to us all. Dating back to the signing of the Treaty of Rome in 1957, they show rows of white men in black suits. By 2007, when the EU celebrated its fiftieth anniversary, little had changed from a gender perspective. Whilst the number of leaders had increased exponentially, only one woman, the German Chancellor Angela Merkel, appeared in the front row among the EU leaders.

Over the decades, the Union itself has evolved considerably and its tasks and competencies have expanded. The EU now is a multi-level polity where 27 member states and the supranational EU level interact in complex ways. The EU has been called a ‘success story of economic integration’ (Börzel 2005: 219). It has come to hold exclusive competencies in market-making policies (including external trade) to ensure the free movement of goods, services, people and capital. It shares with the member states responsibilities for market-correcting policies that involve the harmonization of national standards on environment, consumer protection, industrial health and security, agriculture and labour markets (Börzel 2005: 219). The member states collectively co-ordinate at the EU level their competencies in macroeconomic policies, justice and home affairs, and foreign and security policy. The EU has less or no competence in redistributive policy, including taxation and expenditure, social welfare, culture and education policy (Börzel 2005: 219–24, Hix 2005, Hooghe and Marks 2001.)

The EU’s political integration is often seen as less of a success story. For example, there is no European political party system and no Europeanized media reflecting the strong internal diversity of the EU countries and regions (Swenden 2004: 385). Despite these limitations, the EU has considerable impact on the member states beyond its formal competencies. Even though the EU’s redistributive capacity is small, it transfers significant resources through its



budget. Its market policies constrain the capacity of the member states for redistribution and, as a result, have an indirect impact on their social policy (Scharpf 1999). Competition rules, the convergence criteria and the Growth and Stability Pact put further constraints on the expenditure policies of the member states (Börzel 2005: 219–24). Finally, new policy-making processes in the form of soft law have increased member state co-operation in the fields of social policy, culture, vocational training and education, where EU competencies are otherwise limited (Swenden 2004: 384).

It is not uncommon to hear politics scholars and students ask: ‘What does gender have to do with the EU?’ Does the EU matter to gender and, *vice versa*, gender to the EU? The EU’s capacity to shape gender relations in its member states has been there from its very beginning. The Treaty of Rome was negotiated and signed by men but it contained a clause on equal pay between women and men. Since then the EU has emerged as a key actor in shaping gender relations in Europe even if this is not evident from its fiftieth anniversary family portrait. In a multi-level governance framework, ideas, norms and policies travel and are transferred from the international and EU levels to national, regional and local levels and back again (Rai and Waylen 2008, Waylen 2008). In this process, the EU sets trends and carries particular normative notions of gender equality as well as promoting certain solutions to perceived gender equality problems. Their impact often reaches beyond the 27 member states of the Union. Actors too, including those studied in feminist research such as women’s movements and policy agencies, need to direct their political claims and demands for change to the EU. These processes change the gender relations and regimes as well as the notions of gender equality in member states and in the EU.

There are three interesting and interlocking aspects about the role of the EU in shaping gender relations in Europe. First, the EU has its own *gender policy* as evidenced by its equal opportunities directives, gender policies such as those on family and violence, and general policies such as trade and agriculture (Elman 1996, Haas 2003, Hantrais 2000, Hoskyns 2008, Meehan 1993, Prügl 2008, van der Vleuten 2007).

To characterize the evolution of the gender policy field, Theresa Rees famously distinguished a move from equal opportunities to positive action and gender mainstreaming in the EU (Rees 1998 and 2005). Alternatively, Mark Bell sees equality policy as having evolved from anti-discrimination policy to working towards

substantive equality and to managing diversity (Bell 2000 and 2002). Both frameworks show that EU gender policy has expanded in important ways. On one hand, whilst equal opportunities and anti-discrimination policy focused mainly on women's rights in the field of employment, the principle of gender mainstreaming requires that gender inequalities are tackled across *all* policy areas. On the other hand, gender is no longer dealt with in isolation from other bases of inequality such as race and ethnicity, disability and sexuality. Rather an 'integrated equalities' agenda requires consideration of many types of equalities and discrimination and of how together, they can result in 'multiple discrimination'. Both models capture the expansion of the notion of gender equality on which EU policy has been based from a more formal notion of equal opportunities before the law to more substantive and possibly even structural notions. These different stages of the EU gender policy have, notably, not replaced one another but continue to co-exist.

Second, the interaction between *institutions*, *processes*, *actors* and *discourses* in the EU and its member states is gendered and gendering. When an institution is gendered, it is underpinned by norms about femininity and masculinity, and hierarchical relationships between them, where what is considered 'masculine' is often prioritized over 'feminine'. Gendering, in turn, refers to processes of feminization and masculinization whereby social and political institutions constantly reproduce subjects that fit these norms. The focus on the EU decision-making institutions and policy-making processes reflects a shift whereby the origin of gender policies has to some extent moved from the member states to the supranational EU level (von Wahl 2008: 23). This means understanding the European Council, the European Commission, the European Parliament and the social partners, as institutional constraints from a gender perspective (Clavero and Galligan 2009). Important policy-making processes with gendered impact include the principle of subsidiarity, co-decision-making, hard law and soft law, and the Open Method of Co-ordination (OMC) discussed below (Beveridge and Velluti 2008). Civil society actors also shape and are shaped in new ways by the opportunity structures provided by the supranational actor. Voice and access, as well as political representation in the EU context, are important questions from a gender perspective. Ideas, discourses and norms about gender are now defined at EU level with very real effects on women and men across Europe (Mazur 2009: 28, Verloo 2007, Lombardo, Meier and Verloo 2009).

Third, the fact that the EU is a multi-level polity signifies that subnational, national and supranational institutions, actors and discourses interact in complex ways to enact gender legislation and policy. The processes of *Europeanization* raise questions about the member states shifting towards common EU standards and about the amount of diversity that should be preserved between different countries in relation to gender. The 2004 and 2007 enlargements with the accession of Central and Eastern European Countries (CEEC) pushed the debate on gender and Europeanization beyond the interaction of the EU gender regime with those of the old member states. It has also raised questions about the depth of EU gender policy, its position and weight, and the EU commitment to the value of gender equality in general. A focus on Europeanization may also shift the focus from policy formulation and outputs in the EU to actual policy implementation, outcomes and impacts in the member states and to the question whether gender relations actually change as a result of transnational gender policies (Mazur and Pollack 2009: 7).

Despite this extensive research on the complex ways in which gender and the EU interact, mainstream literature remains ‘virtually untouched’ by feminist analysis (Hoskyns 2004: 33). This means that research, textbooks, theories and policy analyses are written largely in isolation from gender analysis, although some collections now include chapters on feminist approaches (see for example, Egan, Nugent and Paterson 2010, Graziano and Vink 2008, Jørgensen, Pollack and Rosamond 2007, Wiener and Dietz 2004 and 2009). However, as gender informs all social relations, the EU cannot be fully understood or explained without a gender analysis (Kronsell 2005: 1036, Locher and Prügl 2009: 182). On a theoretical level, gender analysis helps to explain the role of gendered power structures and hierarchies in EU integration theories and concepts (see Kronsell 2005). In policy analysis, understanding gender shows that policies are often based on a male norm or strong gender stereotypes, whereby, for example, men’s employment patterns are ‘normal’ and women can be seen as mothers and as an atypical workforce. A focus on gender demonstrates that apparently gender-neutral policies have gendered impact. For example, the EU’s employment policy may fail to increase employment trends if it does not tackle childcare which is important for women’s labour market participation. Sometimes a failure to understand gendered impacts can make laws or policies ineffective.

For instance, ignoring sexual harassment as an important workplace health and safety issue may result in a law that does not address an important problem that many people, especially women, face. Gender mainstreaming has helped to bring this to the attention of policy makers.

The aim of this book is to provide a critical introduction to the issues involved when understanding and explaining the EU from a gender perspective. The book draws upon a field that has expanded tremendously over the past five years and takes stock of and builds upon these findings. Catherine Hoskyns' seminal text of 1996, *Integrating Gender: Women, Law and Politics in the European Union*, has been complemented by a flood of new introductory chapters (Kantola 2010, Locher and Prügl 2009, Prügl 2007), monographs (Askola 2007a, Cichowski 2007, Einhorn 2006, Elman 2007, Guerrina 2005, van der Vleuten 2007, Zippel 2006), edited volumes (Beveridge and Velluti 2008, Liebert 2003, Roth 2008) and numerous articles and chapters on specific aspects of gender and the EU. Elisabeth Prügl (2007) argues that feminist research questions have changed in this process of decades of research on gender and the EU. Whereas feminist research used to inquire 'how and why does the EU adopt and implement gender equality policies?', it now analyzes 'how and why is gender difference constructed and gender inequality reproduced through EU policies?' (Prügl 2007), and, one might add, with what effects on member states' gender regimes.

The goal of this chapter is to provide a background to understanding what we are studying when we study gender and the EU. First, the chapter discusses existing *gender inequalities in Europe and the EU*, reviewing the key issues and challenges to gender equality to which these give rise. Despite similar patterns in the levels and causes of gender inequality in different member states, there is also considerable diversity in member states' gender regimes. This diversity provides the context where the EU policy, institutions, actors and discourses operate and come from. Second, the chapter discusses the *EU gender regime* as evidenced in its binding hard law and non-binding soft law on gender equality. The final section *evaluates* the EU gender regime from a feminist perspective. Whilst pointing to some clear trends, the chapter also highlights the need to be sensitive to the differentiated character of the EU whereby different institutions, actors and policy fields may point to different conclusions about gender and the EU.

## **Gender inequalities in Europe**

'Equality' is a concept debated by theorists, politicians and activists and one that takes on different meanings in different contexts. Politically, there has been a shift from emphasizing 'equality of outcome' to 'equality of opportunities' in policies seeking to address inequalities. Theoretically, debates on equality first moved from theories of distributive justice to theories of recognition as fundamental to equality (Young 1990). Later Nancy Fraser influentially proposed a theoretical framework that addresses both political economy and culture, addressing both redistribution and recognition as equally significant elements of inequality (Fraser 2000), whilst Iris Marion Young has suggested that the two need to be combined with representation (Young 2000). In today's world, a number of scholars and activists share a concern that while political equality is high on the agenda, there is a worrying indifference to economic inequality (Phillips 1999; for a discussion see Kantola and Squires 2010).

Europe has witnessed a number of positive trends with regard to gender equality. Women's labour market participation has increased over the past decade. This has been enabled by changing attitudes, active labour market policies and increases in childcare provision providing more 'equal opportunities' for women. Indeed, Europeans' attitudes to gender equality converge on women's and men's equal right to participate in the labour market, which is the view that gathers the highest level of support in the member states (Gerhards, Kämpfer and Schäfer 2008: 10). In terms of recognition and representation, women today are better represented in political decision-making processes than before (Chapter 3) and their concerns are also kept on the political agenda by an array of women's organizations, movements and policy agencies that have gained access to political decision-making (Chapter 4). This has helped to frame issues such as violence against women as fundamental to gender equality and put them on the European political agenda.

However, a number of serious Europe-wide challenges to gender equality remain. Labour markets in the EU are horizontally and vertically segregated on the basis of gender. This means that there are women's jobs and men's jobs and the latter are better paid than the former. In general, female employment is more concentrated than male employment in the fields of public sector, health care and

education (Barth, Røed and Torp 2002: 9). The European gender pay gap has remained at about 15–20 per cent despite 50 years of legislation and policy in the field (Plantenga and Remery 2006: 4–5, Rubery *et al.* 2002), and only a third of all managers across all EU-25 countries were women in 2005 (Eurostat 2006: 4). A third of working women are in part-time jobs, compared to 7 per cent of men, which leaves many women outside social security schemes and makes their pensions smaller. The inequalities in the labour market are partly caused by the unequal distribution of care responsibilities between women and men (Aliaga 2005: 1). This makes the issue of reconciling work and family, maternity, paternity and parental leave policies, and childcare provision central to achieving gender equality (Chapter 5).

The fact that women have lower employment rates than men in EU countries is a key factor contributing to women's greater exposure to poverty and social exclusion. Social welfare systems in many European countries still rely on an implicit policy assumption that women have or should have access to the income of a male 'breadwinner' partner or derive benefits as his dependent spouse (Fagan, Urwin and Melling 2006: 8). It is often black and ethnic minority women who are most at risk of poverty. For example in the UK, only eight per cent of Pakistani and Bangladeshi women have an occupational pension and one per cent a personal pension. Black and ethnic minorities face direct discrimination in European labour markets and institutional racism hinders the careers of many (European Commission 2006: 77).

Gender inequalities remain not just in terms of economic, political and social rights of women but also in terms of civil rights. Feminist scholars have traditionally highlighted the importance to women of bodily integrity, which is defined by such issues as gender violence, reproductive rights, abortion and sexuality. Again, notable levels of domestic violence have persisted in European countries. Women's reproductive rights and the right to abortion remain contested in some member states and criminalized in Ireland, Malta and Poland. Similarly, gender stereotypes in media and advertising as well as in education promoting traditional gender roles are a source of inequalities.

The practices that reproduce these gender inequalities are institutionalized at national, local and international levels in different gender regimes. Elisabeth Prügl defines a gender regime in the following way:

Regimes are institutions, sets of rules that make gendered agencies and structures. As such, regimes are conduits of power: they produce normalized and empowered subjects, but they also routinize power, giving the effects of power permanence and structure. (Prügl 2008: 47)

In Europe, there are local, regional, national, EU and international gender regimes that interact in the multi-level governance framework. At the crudest level, they define who works, who cares, who participates in political decision-making, who has a right to have a family and children (Sainsbury 1999, O'Connor, Orloff and Shaver 1999). Some scholars use more specific terms such as 'an equal employment regime' to describe how states, markets and families interact in relation to gendered work and employment patterns (von Wahl 2008: 21) and others talk about particular care regimes (Lewis 1997).

There is considerable variation in member states' equalities, inequalities and gender regimes. Member states' gender regimes range from the conservative welfare states of continental Europe to the British liberal conservative regime, the southern European 'Mediterranean regime' and the 'Nordic egalitarian model'. These are briefly introduced below to illustrate the different traditions, norms and institutions that continue to shape the European landscape of gender inequality.

The social capitalist, corporatist or conservative welfare states of continental Europe, such as Germany, Belgium, and the Netherlands, appear to be based on a passive or reactive type of welfare policy where the aim is not to change the market logic but merely to temper its outcomes (Esping-Andersen 1990). The fact that social rights are linked to class and status combined with the maintenance of the traditional family results in specific gendered patterns (Bussemaker and van Kersbergen 1999: 17). Social policy and taxation are based on the primacy of the family unit, where the male breadwinner as the head of the family receives benefits. The regime relies on a female caregiver, private care arrangements and a strong division between the public and the private spheres. Wives' rights to benefits may be dependent on husbands' rights, and hence married women lack individual rights to benefits (Sainsbury 2001: 124). The division of labour in the family is reflected in the division of labour in the labour market, where there is the persistence of ideas about men's jobs and women's jobs (Macrae 2006: 526, 540).

Women's employment rates have traditionally been low and women risk poverty at the time of divorce. These issues have been politicized via interaction with the EU equal treatment laws and norms and there is evidence of a slow change towards the EU gender regime discussed below.

Britain is an example of a liberal regime combined with conservative values with a restricted role for the state and heightened emphasis on the individual. This trend was strengthened in the 1980s and 1990s by successive Conservative governments. For gender relations, this means that a number of key issues, such as motherhood and childcare, are considered 'private' and the regime is based on the view that the market should provide what is needed. Social policy in this regime, as in social capitalist regimes, is based on a male-breadwinner and female-caregiver model that promotes 'economic dependence on marriage' (O'Connor, Orloff and Shaver 1999: 7). Women's employment is characterized by high levels of part-time work and long career breaks for mothers of young children. Both Germany and the UK show relatively high poverty rates for single mothers and relatively high gender gaps in poverty (O'Connor, Orloff and Shaver 1999: 20). The New Labour government has changed some of these patterns by providing more support for families since 1997 (Lister 2004). Some commentators suggest that this has signified a move to a 'one-and-a-half-workers model' where women still work part-time and men full-time (Lister *et al.* 2007: 58).

The 'Mediterranean welfare state regime' in southern Europe is based on the central role of the family as an institution which ensures social protection with minimal state intervention. In Italy, this is evidenced by the clear shortage of resources earmarked for family policy as compared with the European average (4 per cent versus 8 per cent) (Guadagnini and Donà 2007: 164). Whilst, for example, Italy had a strong Marxist and socialist culture, the role of the Catholic Church has upheld the centrality of the nuclear family. Women's participation in the labour market is among the lowest in Europe; gender pay gaps and gender segregation in the labour market remain high. Gendered division of labour in the family is strong with women having the responsibility for care work and as a result being penalised for maternity, which leads to the lowest fertility rates in Europe (Guadagnini and Donà 2007: 164–5).

The 'Nordic egalitarian model' is based on a dual worker/dual carer gender regime that currently places much emphasis on men's



caregiving roles. Traditionally, women's labour market participation has been high and it has been actively supported by state social policy, for example in the form of extensive childcare arrangements (Bergqvist *et al.* 1999, Sainsbury 1999). Unlike some of the other gender regimes, the public-private distinction is not as strongly upheld. In terms of welfare state provision, social rights have traditionally been universal rather than means-tested, which has reduced poverty for women as well as men. The process of neoliberalization has also rolled back the welfare state in these countries. Feminist critique has pointed to the remaining problems that include the gender segregated labour market, gender pay gaps, the exclusion of minority women from the official discourse on gender equality and the high levels of violence against women (Lindvert 2002, Kantola 2006). Different studies on the levels of gender equality, however, continue to place the Nordic model at the top. For example, Janneke Plantega *et al.* (2009:30) constructed a 'European Union Gender Equality Index' composed of the dimensions of equal sharing of paid work, money, decision-making power and time. Their findings show that the Nordic countries Denmark, Finland and Sweden come closest to gender equality on the basis of these standards, whereas southern countries such as Greece, Cyprus, Malta, Spain and Italy are still far from achieving gender equality.

The new member states of the central and eastern European countries (CEECs) are usually not included in the traditional welfare state typologies on which the gender regimes characterization here draws. Under the communist gender regime, women of working age had full-time paid employment supported by paid maternity leave, paid leave to care for sick children and heavily subsidised childcare – the key elements of the Nordic model. This changed dramatically in the 1990s with the fall of communism and the processes of neoliberalization combined with new traditionalization evidenced by the prominent role of the Catholic Church in countries such as Poland. Women's unemployment soared and women were made redundant when state-owned companies privatized and restructured (Koldinská 2008a: 120). This exposed the underlying gender hierarchies and inequalities in these societies. Whilst western European countries are moving towards an 'adult worker model', Barbara Einhorn (2006: 101) suggests that the CEECs are on an opposite trajectory from a dual-earner model back to the assumption of a male-breadwinner model. Yet women's full-time employment rates remain higher than in a number of western

European countries (such as Austria, Belgium, UK, Germany and the Netherlands) where women tend to work part-time (Fuszara 2008: 109) and the overall gender pay gap is not as high as in the West (von Wahl 2008: 29), complicating any simplistic portrayals of the situation.

The discussion above is useful in pointing to the sheer diversity in the region. Gender policies are institutionalized in different ways, and the EU norms and legislation face significant challenges, due to these differences, when transposed and implemented at the national level. Furthermore, it becomes evident that the concept of gender equality takes on multiple meanings in different countries (see Verloo 2007). In some countries, gender equality may mean mothers' right to stay at home to care for their children, and elsewhere their right to participate in the labour market. As a concept, then, 'gender equality' is remarkably flexible. It can be filled with different meanings by different actors in a process that has been described as 'fixing' or freezing its meaning, 'stretching' it towards wider meanings, 'reducing' it to particular ones and 'bending' it to fit other goals (Lombardo, Meier and Verloo 2009). Definitions of what constitutes gender equality matter, however, because they have very real effects. In addition to specific political effects, such as too expensive or poor quality childcare or dead-end jobs, they can 'depoliticize or degender' gender equality, neutralizing conflict and masking existing power relations (Lombardo, Meier and Verloo 2009b: 190).

Whilst they are useful in pinning down the differences between countries and traditions in Europe, such broad characterizations may also mask more than they reveal about gendered patterns. First, some countries do not fit the models particularly well. France is a frequently mentioned example where the state plays a central role and the values of universality and equality have long informed public policies. Maternity provision has been good and yet there are persistent gender differences. Countries can change rapidly too. For example, Spain has taken significant steps under the socialist governments since 2004, with a parity government, and new progressive legislation on gender violence, same-sex marriage and gender equality, making Spanish gender policy a frontrunner in comparative terms (Bustelo 2009).

Second, the idea of regional gender regimes masks differences both within regions (for example within CEEC or Nordic countries) and within states. Within states, a focus on different policy fields

may generate different results in the extent of gender equality; for example, a focus on violence shows the Nordic countries in a less favourable light (Kantola 2006) although violence is rarely accounted for in comparative models (see, for example, Plantega *et al.* 2009, Ferrari, Occhionero and Nocenzi 2009).

Third, the diversity among women and men and the ways in which gender interacts with class, race, nation and citizenship (O'Connor, Orloff and Shaver 1999), and how states reproduce gender norms through regulation of and through sexuality (Smith 2007) are difficult to grasp with the above models. For example, citizenship rights and responsibilities are not the same for everyone. Belonging and membership can be 'multilayered', which means that they are shaped by belonging to different minorities (Yuval-Davis 1997). The Nordic model has recently been interrogated from the perspective of postcolonial theory. Gender equality is at the core of the discourse on nationhood in these countries and is central to defining who belongs to the nation and who does not. In such a context, gender inequality is easily assigned to other cultures and other racialized bodies (Mulinari *et al.* 2009: 5). A focus on transnational governance patterns may aid such discussions and point to questions about what the gender regimes mean for women from different countries of origin.

### **The EU gender regime: policies, institutions and actors**

It is evident, then, that whilst European countries share some key challenges to gender equality, their gender regimes and definitions of what constitutes gender equality differ considerably. In this context, the EU emerges as a transnational actor promoting particular definitions and solutions to perceived equality policy challenges. In other words, with its expanding competencies, the EU and its institutions – the Parliament, the Commission, the Council, the Court, the social partners – occupy a privileged position in promoting particular policy solutions to gender inequalities and 'fixing the meaning of gender equality' (Lombardo, Meier and Verloo 2009: 13).

The EU gender regime can be discerned by looking at different policies, institutions and norms, and it can be represented by different actors. To provide one way to study the EU gender regime, this chapter briefly maps out EU gender policy and norms in relation to 'hard law' and 'soft law', a distinction followed in a number of

chapters of the book that deepen the picture given here. A focus on hard and soft law makes it possible to discern the governance patterns, institutional policy-making mechanisms and their powers and the actors that each privilege. EU hard law consists of primary law, such as treaties, and secondary law, such as directives, as well as the rulings of the European Court of Justice (ECJ) that are binding on member states. Hence they provide definitive ideas about what the EU institutions and member states have been able to agree upon as crucial to gender equality. Soft law, by contrast, is a broader notion and consists of different policy documents, recommendations and declarations that rely on the power of persuasion, the spreading of good practice and softer instruments. Soft law can, nonetheless, be powerful in terms of setting trends, and Fiona Beveridge (2008) cautions against constructing too strong a dichotomy between the two.

Hard law defines the EU competencies for action, the fields where it can enact binding legislation and policy on its member states. In gender policy, Article 141 EC on equal pay (ex Article 119 of the Treaty of Rome) has occupied a prominent place in the primary law and shaped gender legislation. It calls for each member state to 'ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied'. It gives powers to the Council to 'adopt measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, including the principle of equal pay for equal work or work of equal value.' Chapters 2 and 5 of this book discuss how the article came about and how important directives, such as the Equal Pay Directive 1975, Equal Treatment Directive 1976 (amended in 2002), the Social Security Directive 1978 and the Recast Directive 2006, were enacted on the basis of this article and implemented in member states. All of these tackle gender inequalities and gender-based discrimination in relation to the labour market. Whilst covering a wide range of issues from equal pay to sexual harassment, the EU gender policy that these directives represent has been criticized for being narrow and restricted to anti-discrimination and employment rights as discussed below.

In this context, the Amsterdam Treaty 1997 represented major developments in EU gender policy. First, Article 141 EC was revised in the Amsterdam Treaty to institutionalize positive action and gender mainstreaming as parts of EU gender policy in addition to

anti-discrimination policy in the labour market (Ellina 2003: 52). The EU's gender policy was now officially three-dimensional which removed some of the uncertainties and confusions that had previously surrounded positive action as an acceptable tool in member states' policy-making (Chapter 2). The official adoption of gender mainstreaming, in turn, made a gender perspective and analysis relevant for all EU policy-making processes and policy fields (Chapter 6). Celebrating these developments, some feminist commentators argued that this marked 'the beginning of a new stage' in the development of gender policy in the EU (Shaw 2001: 3) and widened the original commitment of the member states to equal pay for equal work 'to the progressive recognition of equality between women and men as a fundamental principle of democracy' for the whole EU (Hubert 2001: 145).

Second, the Amsterdam Treaty introduced Article 13 EC, which provided a new legal basis for anti-discrimination directives. The article provides new opportunities for attempts to reach beyond some of the confines of the earlier narrow legal basis in gender policy. For example, the 2004 Directive on Goods and Services, enacted on the basis of the article, expanded gender equality legislation in the EU beyond the confines of the labour market and outside the field of employment (Masselot 2007: 153). Its scope includes access to premises that the public are permitted to enter, housing, services of a profession or trade, including banking, insurance, other financial services and transport.

Third, the new article also widened the bases of equality from gender and nationality to race and ethnicity, religion and belief, age, disability and sexual orientation. This has had the effect of pushing for gender inequalities and discrimination to be tackled in conjunction with these other bases of inequality. In this way, the article has been pivotal in developing emerging EU policy on 'multiple discrimination' (Chapter 8). However, Article 13 differs from Article 141 in that the former requires a unanimous vote in the Council whilst when the latter is used, qualified majority voting is applied, enhancing the possibilities for progressive gender directives as discussed below and in Chapters 4 and 5.

In addition to law and policy, the EU gender regime is shaped by the policy-making process by which directives and policies are enacted and the gendered and gendering roles that different institutions play in this process. The process by which the anti-discrimination directives have traditionally been drafted is known as the classic