

## **Gendering the European Union**

New Approaches to Old Democratic Deficits

Joyce Marie Mushaben; Gabriele Abels

ISBN: 9780230353299

DOI: 10.1057/9780230353299

Palgrave Macmillan

### **Please respect intellectual property rights**

This material is copyright and its use is restricted by our standard site license terms and conditions (see [http://www.palgraveconnect.com/pc/connect/info/terms\\_conditions.html](http://www.palgraveconnect.com/pc/connect/info/terms_conditions.html)). If you plan to copy, distribute or share in any format including, for the avoidance of doubt, posting on websites, you need the express prior permission of Palgrave Macmillan. To request permission please contact [rights@palgrave.com](mailto:rights@palgrave.com).

# 3

## Gendering the Institutions and Actors of the EU

*Anna van der Vleuten*

In order to appreciate the gender outcomes of European policymaking, one needs to know how 'Europe' functions. As a multilevel political system, the European Union (EU) offers different opportunities and constraints for the promotion of gender justice than those afforded by national political systems. Unfortunately, European policymaking is often perceived as complex and obscure. In addition, the EU has witnessed several major changes in the relations among its key institutions over the last five decades. What has remained constant up to now is women's obvious underrepresentation in all EU institutions, albeit to varying degrees and with interesting patterns (Kantola 2010a: 50–75). In order to shed light on this complex and evolving polity, this chapter reviews the main actors at the supranational level, concentrating on five core institutions: the European Commission, the European Parliament (EP), the Council of the EU (in short: Council), the European Council, and the European Court of Justice (ECJ).<sup>1</sup>

We examine their composition, the nature and scope of female representation, their primary functions and the attention that each, in turn, gives to gender issues. We then analyse the role and impact of organised interests, including the Economic and Social Committee and the Committee of the Regions, in relation to EU gender policies, followed by an attempt to answer the question: Under what conditions can women in decision-making really make a difference? I argue that equality advocates have proved very adept at playing a multilevel game: by mobilising nationally and forging coalitions with transnational and supranational actors, women's movements have pressured their home governments from two directions, eventually allowing them to win more rights than the EU founders ever anticipated.

The EU operates as a multilevel system, analogous to David Easton's classical model of the political system, consisting of inputs, through-puts, outputs and feedback. Both the European Council and national or transnational actors (interest groups, experts, and lower level authorities) supply *inputs* in the form of demands and knowledge (see Figure 3.1). At the supranational level, inputs are converted into policies via a negotiation process involving

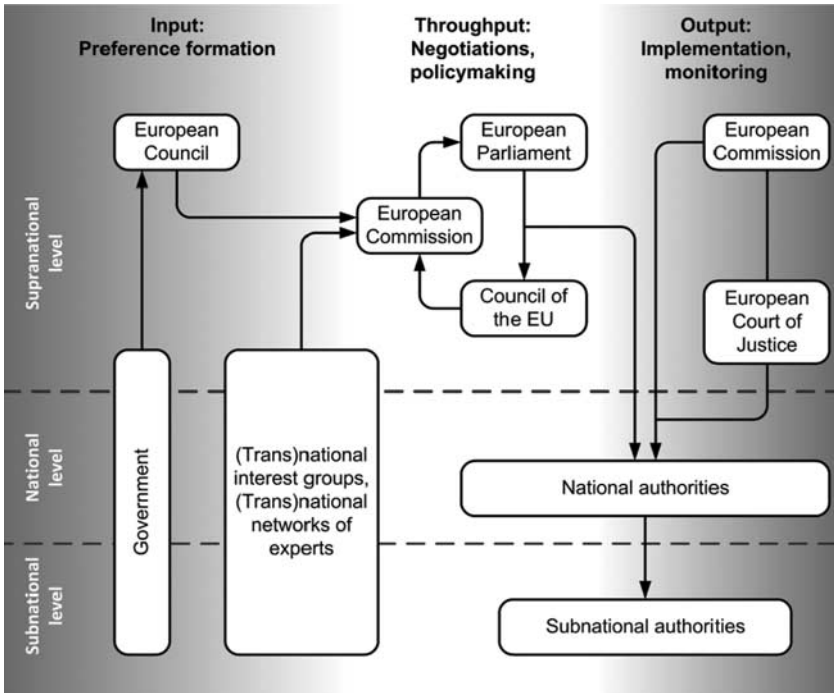


Figure 3.1 The EU as a multilevel system

Source: Charted by the author.

the Commission, the EP and the Council. The *output* feeds back into the national level, where European decisions must be ‘transposed’ into rules and policies by national and subnational authorities. The Commission and the ECJ monitor this implementation process.

## 1. The Commission

The term ‘Commission’ actually refers to the President and the College of Commissioners, who serve five-year terms. The President plays a role comparable to that of a prime minister. Ensuring institutional coherence, he or she is responsible for introducing major policy initiatives. The European Council (composed of the leaders of the national governments) nominates a candidate by qualified majority; the choice of the candidate has to reflect the outcome of the elections of the EP. The nominee is then elected by the EP. All Presidents to date have evinced the same profile: middle-aged men who formerly occupied high-level positions in their countries of origin. Following a Christian–Democratic victory in the June 2009 elections,

Christian–Democrat José Manuel Barroso was confirmed for a second presidential term. The President forms the College of Commissioners based on nominations submitted by the member states. After conducting a formal hearing with each potential Commissioner, the EP must approve their collective appointment by a majority vote (see section on EP).

The Commission includes one delegate per member state, totalling 27 Commissioners as of the 2007 accession of Bulgaria and Rumania. Hoping to enhance its institutional efficiency and effectiveness by curbing the expanding number of Commissioners, the Lisbon Treaty originally foresaw the introduction of a rotating system as of 2014. However, this provision was eliminated in 2009, in an effort to persuade the Irish to vote ‘Yes’ in their second referendum on the Lisbon Treaty.

Each Commissioner is responsible for a specific policy domain. States actively compete to secure one of the heavy ‘portfolios’, such as Competition, Internal Market, Agriculture, Trade and Justice. Jockeying for these positions is mainly a matter of prestige, since Commissioners are not spokespersons for their home countries: indeed, they are forbidden to take instructions from any government. The Commission ceased to be an exclusively male body in 1989; at present, nine out of 27 Commissioners (33 per cent) are female (see Table 3.1). Its composition depends on the candidates proposed by the member states, yet if each were to nominate a female and male candidate, the President could easily convene a gender-balanced College. However, there is no such rule in the European treaties.

Gender issues used to fall under the portfolio of the Commissioner for Employment and Social Affairs. A few of the 11 former Social Affairs Commissioners, like Patrick Hillery and Anna Diamantopoulou, have been strong policy entrepreneurs, fighting hard for women’s interests. Others have pursued different priorities. In the 2010–2014 Commission, primary responsibility for ‘gender equality in all fields of EU policy’ lies with Viviane Reding, Commissioner for the new portfolio of Justice, Fundamental Rights and Citizenship, while responsibility for ‘gender equality in the workplace’ remains with Social Affairs Commissioner László Andor.

Beneath the College lies the Commission’s own bureaucracy. It consists of 25 Directorates-General (DG) and 13 specialised services, including the Legal Service and the statistical service Eurostat. A DG is equivalent to a ministry; covering a specific policy domain, it prepares dossiers for the Commissioner in charge. Officials in DG Employment, Social Affairs and Equal Opportunities (DG EMPL) are primarily responsible for gender equality policies. They also chair the Inter-Service Group on Gender Equality, bringing together officials responsible for this quest in all other Directorates-General. The Group’s main task is to develop a gender mainstreaming approach for all policies and programmes, as many services still lack specific expertise. Established in 2007 and based in Vilnius (Lithuania), the European Institute for Gender Equality will further generate knowledge and provide technical assistance to the

Table 3.1 Composition of the European Commission and Social Affairs Commissioners

Term	President of the Commission, nationality between brackets	Number and percentage of male Commissioners, incl. President		Number and percentage of female Commissioners		Commissioner of Social Affairs, in charge of gender equality
		N	%	N	%	
1958–1961	Walter Hallstein (DE)	9	100	0	0	Giuseppe Petrilli (IT)
1962–1967	Walter Hallstein (DE)	9	100	0	0	Lionello Levi-Sandri (IT)
1967–1970	Jean Rey (BE)	12	100	0	0	Lionello Levi-Sandri (IT)
1970–1972	Franco Malfatti (IT)	9	100	0	0	Albert Coppé (BE)
1972	Sicco Mansholt (NL)	9	100	0	0	Albert Coppé (BE)
1973–1976	François-Xavier Ortoli (FR)	13	100	0	0	Patrick Hillery (IE)
1977–1980	Roy Jenkins (UK)	13	100	0	0	Henk Vredeling (NL)
1981–1984	Gaston Thorn (LUX)	14	100	0	0	Ivor Richard (UK)
1985–1988	Jacques Delors (FR)	17	100	0	0	Manuel Marin (ES)
1989–1992	Jacques Delors (FR)	15	88	2	12	Vasso Papandreou (EL)
1993–1994	Jacques Delors (FR)	16	94	1	6	Padraig Flynn (IE)
1995–1999	Jacques Santer (LUX)	15	75	5	25	Padraig Flynn (IE)
1999–2004	Romano Prodi (IT)	15	75	5	25	Anna Diamantopoulou (EL)
2005–2009	José Manuel Barroso (PT)	18	66	9	33	Vladimir Špidla (CZ)
2010–2014	José Manuel Barroso (PT)	18	66	9	33	Viviane Reding (LUX) László Andor (HU)

Source: Data compiled by the author.

Commission and member state authorities. As of 1996, gender mainstreaming strategies have raised awareness regarding the underrepresentation of women in middle and senior management posts. Annual targets exist for their recruitment and appointment, but in typically male policy strongholds such as External Relations change takes time. A Network of Focal Points on Equal Opportunities monitors equality in relation to Commission human resource policies.

The Commission is a supranational body, which 'shall promote the general interest of the Union' (Article 17 TEU) through its exercise of policymaking, management and control functions. Policymaking is the Commission's main task. It thus plays a crucial role in the development of European legislation by way of its monopoly on policy initiation: every EU legislative act is based on a proposal written and approved by the Commission.<sup>2</sup> Given its formal right of initiative, the Commission is often portrayed as the motor of European integration; but it likewise depends on the cooperation of the Council and the EP to move the process forward. During its weekly Wednesday meetings, the Commission discusses draft proposals prepared by individual Commissioners and their respective DGs. If the Commission reaches a consensus, the proposal is forwarded to the Council and the EP. In case of disagreement, it is sent back to the DG in charge. In May 2006, for instance, Commissioner of Justice Franco Frattini submitted a list of safe countries of origin to which EU member states would return asylum seekers and refugees. Commissioners Margot Wallstrom and Neelie Kroes opposed having Mali and Botswana designated as 'safe' by the EU: Mali tolerates the practice of female genital mutilation, while Botswana treats homosexuality as illegal, and also applies the death penalty. Frattini had to withdraw the list.

Given its limited knowledge-generating capacity, the Commission makes extensive use of external consultation during the preparatory process. It has established 300–400 expert committees, such as the Expert Group on Trafficking in Human Beings, comprised of specialists from the member states. Also, it has established 150 permanent advisory committees consisting of representatives for all stakeholders. The Advisory Committee on Women and Rural Areas, for instance, includes persons representing farmers, trade and consumer groups, the European Women's Lobby and trade unions. External consultation helps the Commission to develop strong proposals but also renders it dependent upon the knowledge and interests of others. It organises internet consultations, in an effort to broaden the range of stakeholders able to offer opinions on new policy ideas. The White Paper on European Communication Policy (01/02/2006), for instance, received 313 responses from different organisations. One respondent urged the Commission to adopt a gender and diversity approach to communication policy.

Moreover, the Commission manages expenditures under the Structural Funds and administers programmes in research, education, health and youth actions. Within the budgetary framework of 'Gender Equality' of the

Community Programme for Employment and Social Solidarity (PROGRESS), it offers financial support to expert networks and to projects securing the implementation of gender equality, for example, through training Greek public administration workers.

Finally, the Commission acts as the guardian of the treaties and of European law. Together with the Court of Justice, it monitors the application of EU rules. The European Network of Legal Experts in the field of Gender gathers information on the implementation of gender equality legislation. If violations come to light, the Commission may initiate infringement proceedings. First, it sends the state a formal notice indicating a possible breach of legal obligations. The member state usually replies by explaining why the rule has not (yet) been applied. If not satisfied, the Commission sends a 'reasoned opinion', summoning the member state to remedy the situation. If nothing happens, the Commission refers the case to the Court, initiating the second stage (see below). This mechanism has proven effective in many instances where national governments dragged their feet. The Dutch Equal Pay Act (1975), for instance, did not cover civil servants. After five years of pressure from the Commission, a reasoned opinion convinced the Dutch government of the necessity to amend the law (van der Vleuten 2007). The Commission also publishes scoreboards, showing the stages of transposing European regulation into national law. Governments are keen to avoid being 'named and shamed' and thus push for good rankings on these scoreboards.

Assessing the Commission from a gender perspective, we can observe that the Commission leans quite favourably towards initiatives in the field of gender equality. This derives from its strategic interest in extending its mandate as supranational policymaker, dating back to the early institutionalisation of gender equality within DG EMPL in the 1970s. The Unit Equality between Women and Men (DG EMPL G/1) plays a key role in monitoring implementation of gender equality directives and in organising and financing transnational networks – such as the Network of Experts on Employment and Gender Equality Issues and the Network of Experts in Gender Equality, Social Inclusion, Health and Long-Term Care – to warrant political support and obtain input from experts and societal groups. As chief policy initiator, the Commission is guided by ambitious hopes of advancing European integration. This is difficult in domains extensively regulated at the national level, such as social security, but easier in relatively new domains, like sex discrimination. A Commissioner needs innovative ways to convince reluctant governments 'to upgrade the common interest' and move beyond often meagre compromises reflecting minimum standards. Experts and representatives from 'pioneer states' play an active role in legitimising new constructs – like indirect discrimination, sexual harassment and gender mainstreaming. DG EMPL frames and reframes its proposals over time, to increase the chances of their adoption. Part-time work, for example, was deemed undesirable 'atypical work' in the draft directive of 1981.

It was re-introduced in 1991, as a tool for reconciling women's (paid) work and (unpaid) care. Finally, in 1995, packaged as an instrument for fighting unemployment of men and women, the directive combating discrimination of part-time workers was adopted (van der Vleuten 2007).

The Commission is limited in three ways in its promotion of gender justice. First, insofar as all of its actions require a foundation in the existing treaties, it cannot address each and every topic it deems relevant. As such, it cannot propose legislation to enable same-sex marriage or to fight sex-based violence as long as the treaty does not provide a related reference. In the latter case, the Commission has partially circumvented this obstacle by proposing a programme, named DAPHNE, on preventive measures to combat gender-based violence and to promote financial support for victims – a programme based on the treaty article concerning public health. Second, the need to secure Council approval often forces the Commission to water down its proposals, limiting the effectiveness or even undermining the goals of its action. Third, gender mainstreaming is often poorly implemented outside of DG EMPL. During accession negotiations with the Central and Eastern European countries, gender mainstreaming was not applied (Bretherton 2001). The current round of negotiations concerning new economic agreements with a host of African and Caribbean countries have thus far been conducted in a gender-blind manner, ignoring the gendered consequences of trade liberalisation. Since the 1980s the Commission has often found ways around these limitations by turning to its ever stronger ally, the EP.

## 2. The European Parliament

Until 1979 the EP functioned as a part-time assembly of nationally appointed parliamentarians. Ever since that date, direct elections have been held every five years in all member states, being scheduled every five years. Since the enactment of the Lisbon Treaty, the EP has consisted of 751 members. Seats are allocated in proportion to the number of inhabitants per member state; the smallest member states hold six seats and Germany, the biggest one, occupies 96. The members of the EP (MEPs) do not represent their countries but rather their political parties. The latter cooperate in overarching European party groups, consisting of national political parties with similar ideologies. As a result of the 2009 EP election there are currently seven party groups represented; the largest are the Christian-Democrat European People's Party (EPP) and the Progressive Alliance of Socialists and Democrats (S&D). Historically, most parliamentarians have been pro-integrationist, but politicians very critical of the European project have also been elected since the 1980s, thus intensifying debates within the EP itself. The issue of women's 'empowerment' has been raised in many EP resolutions and during every election campaign. After the first direct



elections in 1979, the number of women in Parliament doubled from 8 to 16 per cent, further increasing over the years to 35 per cent. Women are thus represented in substantially higher numbers in the EP than in many member state parliaments.

The EP elects its own President for a (renewable) term of two and a half years. In 2009, Jerzy Buzek was elected as the first President from an Eastern European country. The Parliament meets in Strasbourg (France) every month for plenary session, during which votes are taken. All preparatory work is undertaken in parliamentary committees and party groups that meet in Brussels. This arrangement, much criticised by the European electorate and MEPs as a waste of money (costing an estimated €180 million per year), can be changed only way of unanimous agreement among all national governments. This accord is unlikely to materialise due to staunch French opposition.

Every parliamentarian belongs to one or more parliamentary committees. There are 20 committees, each with a specific policy domain. ENVI (environment, public health and food security) and BUDG (budget) are the most influential, given the EP's strong powers in these domains. The Committee on Women's Rights and Gender Equality (FEMM) prepares amendments on all proposals involving women's rights, non-discrimination and gender equality. It also organises hearings and tribunals, for example, on women and war, Muslim women and sexual and reproductive health and rights, to obtain input from NGOs and experts.

The EP has legislative, budgetary and supervisory tasks. The powers of the EP have been expanded with each treaty amendment cycle since the mid-1980s. The EP is, first and foremost, a law-making body. Each Commission proposal is assigned a *rapporteur*, a parliamentarian who prepares discussions and draws up amendments. The proposal is debated in the appropriate committee(s). Once the committee approves it, an amended proposal moves on to the plenary session for debate and approval by the full EP. It then moves on to the Council, which reaches a common position on the proposal and the amendments. Depending on the degree of agreement between the EP and the Council, this cycle of drafting by the Commission, debate in the EP, and deliberation by the Council may be repeated (second reading). If no agreement is reached, a conciliation committee enlisting EP and Council representatives is formed. The draft become law only if a majority in both institutions approves it. This procedure used to be called 'the co-decision procedure'. Since the 'Lisbon' ratification, it has become the 'ordinary procedure' and it now applies to almost all policy domains.<sup>3</sup>

Second, the EP possesses budgetary power. The EU revenue base consists of import levies imposed on agricultural products from third countries, import duties on industrial products, a percentage of the value added taxes (VAT) collected in member states, and the latter's contributions, which are based on the gross national income. The Commission draws up an annual draft

budget for approval by the Council and the EP. The EP uses its powers to ensure and increase funding for programmes involving diversity and gender equality, among others. The EP also controls the management of the budget by the Commission. In this task it is assisted by the Court of Auditors.

Third, the EP supervises the Commission through the formal election of its President and through its confirmation of the College of Commissioners. Introduced as an act of symbolic politics, the Parliament now organises formal hearings with all candidate-Commissioners to test their knowledge and orientations regarding their prospective portfolios. The EP does not have the power to refuse individual candidates but may threaten to reject the whole Commission if certain candidates are not replaced. In August 2004, for instance, the EP successfully opposed the choice of Rocco Buttiglione (Italy) for the Justice portfolio, because his arch-conservative views on homosexuality and women did not fit with that unit's responsibility for anti-discrimination policies. The Commission is held politically accountable to the EP through the use of written and oral questions, answered during plenary sessions. Prior to the 2009 appointments, MEPs asked the Commissioners what actions they intended to undertake to ensure the mutual recognition by the member states of same-sex marriages (19 May 2009), and whether they would promote projects in Afghanistan to increase the participation of women in public life (15 April 2009). Should malfeasance or dereliction of duty come to light involving individual Commissioners, the EP can ultimately vote to censure the Commission as a whole. If the motion carries, the Commission must resign. In March 1999, accusations of fraud and nepotism on the part of Commissioner Edith Cresson led the EP to threaten a motion of censure, compelling the entire body to resign.

From its early days, the EP has been a strong supporter of gender justice. It has adopted many resolutions asking for new Commission initiatives. It has consistently voted in favour of amendments aimed at strengthening European legislation on gender equality. The high number of women MEPs has contributed to keeping women's issues on the agenda. Between 2004 and 2009, the members of the FEMM committee acted as individual *rapporteurs* on 43 occasions, voicing a gender perspective on topics ranging from the situation of handicapped women in Europe, juvenile delinquency, marketing and advertising, to the position of women in Turkey. Women MEPs have compelled Commissioners to take gender equality seriously, have prevented the European Women's Lobby from losing its financial support and have saved the FEMM Committee itself from being disbanded. The FEMM Committee is an important addressee for groups lobbying to defend the interests of women, lesbians, gays and transsexuals. Yet its room for manoeuvre is constrained by the limitations of the treaties (noted earlier) and by concomitant procedures. If the consultation procedure applies, the Council must confer with the EP, but it does not have to treat its opinion as binding. The 2004 directive to ban sex discrimination in the access to and supply

of goods and services was seriously watered down in the Council, under pressure from the mass media and insurance companies; the EP was unable to do more than propose amendments. While the extension of co-decision under the Lisbon Treaty has increased potential EP influence, this procedure still requires the EP to act strategically and to forge alliances with the Commission and pioneer states in the Council in order to see its amendments adopted.

### 3. Council and Coreper

Formerly known as the Council of Ministers, the Council was established in 1951, as an intergovernmental counterweight to the supranational High Authority (the Commission's predecessor). Here national interests occupy centre stage. Unlike the EP or the Commission, the Council is not comprised of 'European' representatives but of ministerial level representatives from each member state. It has nine different configurations dealing with diverse policy areas, plus a General Affairs Council consisting of national leaders and foreign affairs ministers, designed to ensure consistency in the work of the different formations. Gender issues are usually handled by the Employment, Social Policy, Health and Consumer Affairs Council (EPSCO). Female representation in the Council varies according to the number of national women ministers or secretaries of state. Among the EU-27, 27 per cent of senior ministers, on average, were women in fall 2010.<sup>4</sup> In most Council configurations women are outnumbered by men, although EU enlargements incorporating Scandinavian and Central/Eastern European countries have increased the number of female ministers. The Secretariat-General provides administrative support for all Council activities.

The Council presidency rotates among all member states. It is held by groups of three members for a period of 18 months, each member chairing for six months. Civil servants and politicians from the presiding country chair all meetings, from the level of working groups to the Council. Serving as President means more than just directing the meetings. A presiding member state can steer the agenda, the pace and the outcome of decision-making. Member states thus attach a high value to the presidency. They can enhance their own prestige by placing appealing issues on the agenda or by bringing a complicated dossier to a happy conclusion. This implies that the attention accorded to gender issues will vary with the national salience of gender issues in the presiding member state.

The Council does not meet weekly, insofar as ministers are busy in their home countries. Daily EU business is conducted by a committee of diplomats based in Brussels. Called 'Coreper' (Committee of Permanent Representatives), it consists of member state ambassadors (Coreper II) and their deputies (Coreper I). Coreper II is in charge of institutional, financial and legal affairs as well as foreign and security policies. Coreper I prepares all other Council configurations, including EPSCO. The ambassadors and their

deputies, supported by civil servants from national ministries, participate in intergovernmental working parties where they negotiate on behalf of their home country.

There are roughly 150 working groups in which all new Commission proposals are discussed and negotiated. The Working Party on Social Questions discusses many issues with a gender dimension. A Commission staff member attends the meetings to comment on the proposal. After discussion, files move up to Coreper II. If Coreper reaches an agreement, the file is transferred to the Council as an 'A item' for formal enactment. No further discussion occurs unless so requested by a member state. The system of 'A items' explains why gender equality issues occasionally appear on the agenda of Council formations other than EPSCO. If Coreper cannot reach agreement, the proposal appears on the Council agenda as a 'B item', leaving the matter to be resolved by the ministers. An estimated 75–80 per cent of Council business finds agreement at the working group level and a further 15–20 per cent at Coreper level, which leaves only 5 per cent of the time for substantive debate and approval at the ministerial level. Coreper also maintains regular contacts with the EP (see Nugent 2010).

Created in 2001, the High Level Group on Gender Mainstreaming is an informal group of senior civil servants responsible for gender mainstreaming in their respective member states. Meeting twice a year, the group considers the development of indicators and plans for following up the Beijing Platform for Action.<sup>5</sup> It supports the presidency in identifying relevant policy matters to address during its six-month term, while assisting the Commission in preparing the annual Report on Equality between Women and Men for the spring European Council (see below). Another informal group, similarly composed, is the High Level Group on Gender Mainstreaming in the Structural Funds, created in 2004. It provides input on gender mainstreaming to authorities managing the Structural Funds, and it exchanges 'best practices' regarding efforts to implement mainstreaming involving structural funds at the national level.

The Council's main task is decision-making, alone or jointly with the EP. Until the mid-1980s the Council had to approve all draft legislation unanimously. The veto power of individual states meant that many draft provisions remained on the shelf for years, even decades. Parental leave, for instance, was placed on the agenda in 1982 but blocked by a British veto for the next 14 years. To overcome stagnation, governments decided in 1986 to introduce qualified majority voting (QMV) for a limited number of policy domains. Since then, every treaty modification has increased the number of issues to which QMV applies – which coincided with the extension of the EP's legislative power. As regards gender equality in the labour market and at the workplace, the Council and the EP may adopt minimum norms by QMV. Legislation to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation has to be approved unanimously.

The rules have changed several times. As of 2014, a ‘qualified majority’ will consist of approval by at least 55 per cent of the member states, representing at least 65 per cent of the total EU population. A blocking minority consists of at least four member states. The shift from unanimity to QMV has changed the negotiating process among EU states: they are forced to build coalitions to create either a blocking minority or a qualified majority. In addition, it promotes cooperation between member states and ‘their’ MEPs.

Gendering the Council has always been critical as well as difficult. The double shift from unanimity to QMV and from non-binding EP consultation to co-decision has improved the prospects for activities promoting gender justice. In the Council, the blocking power of single states has been broken. Influencing Council politics has become still more complicated, as it requires one to address diplomats and ministers of those countries susceptible to building an alliance (a majority or a blocking minority) supporting one’s point of view. How a policy proposal travels back and forth between institutions is illustrated in Figure 3.2.

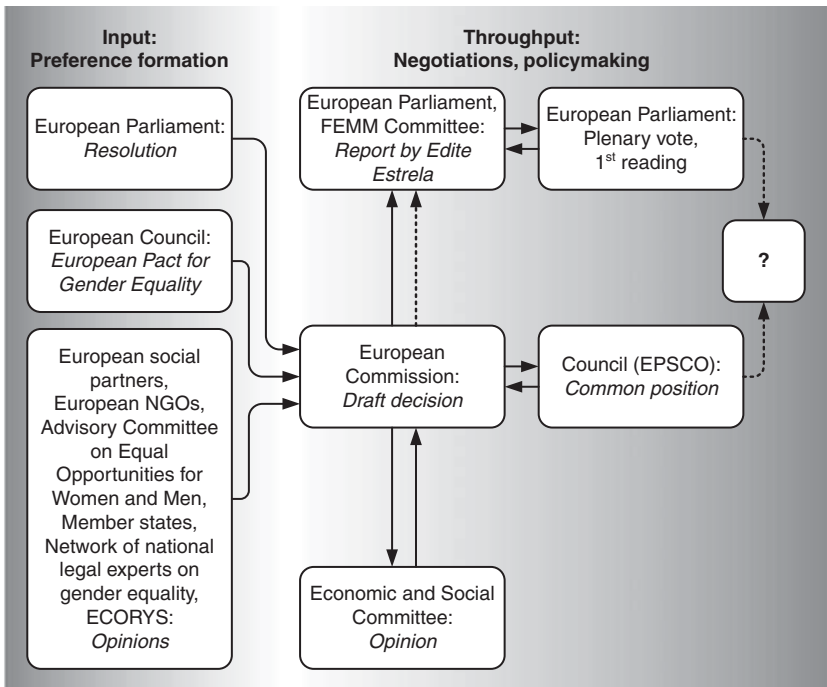


Figure 3.2 ‘Who said what and when?’ The itinerary of the proposal to extend maternity leave

Source: Compiled by the author.

#### 4. European Council<sup>6</sup>

During the early years, integration built on summits where the heads of government concluded 'grand bargains'. Beginning as an informal 'fireside chat', the European Council has become the EU powerhouse. It consists of the heads of state or government (assisted by their Foreign Affairs Ministers), the EU President, the Commission President and the High Representative for Foreign Affairs. The European Council meets twice every six months and convenes special meetings in times of crisis, for example, when violence broke out between Georgia and Russia in August 2008, or as the Euro crisis took hold in 2010. The 'family photos' taken at summit meetings clearly testify to the underrepresentation of women at government level. In March 2007 German Chancellor Angela Merkel appeared in radiant orange at the Berlin summit, surrounded by 26 dark-suited men. Presently, among the 27 presidents and prime ministers there are currently three female heads of state and three female prime ministers.

The prime minister or president of the country temporarily serving as the EU President used to head the European Council simultaneously; the Lisbon Treaty has introduced a permanent President for a renewable term of two and a half years, however. Belgian Prime Minister Herman van Rompuy was appointed by the European Council as the first 'regular' President. His task is to chair the European Council and 'drive forward its work'. Another innovation of the Lisbon Treaty involves the function of the High Representative of the Union for Foreign Affairs and Security Policy, who has the task of developing and conducting the EU's external relations. The High Representative enjoys a base in the intergovernmental Council as chair of the Foreign Affairs Council and in the supranational Commission as Vice-President. Lady Catherine Ashton (UK) is the first to occupy this post; she is assisted by the new European External Action Service.

The European Council provides political leadership, taking on the big decisions, for example, in introducing the Euro or a common asylum policy. It also tries to re-float negotiations deadlocked at lower levels. A purely intergovernmental body, it renders decisions based on unanimity. The Conclusions of the Presidency, presented after every European Council, are not binding. Rather, they function as soft law, guiding the agendas and negotiations of all other institutions. 'Eurosummits' are surrounded by secrecy. Each government presents its accomplishments at carefully orchestrated press conferences, but the processes preceding the outcome occur behind closed doors.

The European Council is very much a masculinist body. Yet, even though women are rarely present at the top, their issues do regularly show up on the agenda due to the European Employment Strategy (EES; also see Hubert

in this volume). This policy strategy was devised in 1997, to counter criticisms of the EU's neoliberal orientation, public scepticism with respect to the Euro and pressure from social-democratic leaders. The European Council formulates policy guidelines regarding employability, job creation and equal opportunity policies.

These guidelines must be implemented by way of the Open Method of Coordination (OMC). This method relies on soft law mechanisms, like peer review and benchmarking, for which the European Council approves common objectives and fixes targets. Each member state subsequently draws up a National Reform Programme, outlining ways to reach the overarching objectives. The Commission assesses the outcomes, identifies pilot projects and draws up scoreboards indicating whether the targets have been met. In 2006, the European Council adopted a European Pact for Gender Equality, confirming its commitment to strengthening economic growth and competitiveness by promoting women's employment and ensuring a better work-life balance. One positive effect of the OMC is that each spring gender equality appears on the agenda of the European Council when the latter assesses whether National Reform Programme objectives have or have not been met as regards female employment rates, childcare and the gender pay gap. OMC limitations include its lack of sanctions and the focus on quantifiable aspects of gender justice and labour market issues. These features clearly hinder the effectiveness and transparency of the EES (Verloof and van der Vleuten 2009).

## 5. The Court of Justice

Another result of the Lisbon Treaty is that the Court of Justice of the European Union,<sup>7</sup> seated in Luxembourg, now consists of the Court of Justice, the General Court (formerly the Court of First Instance) and the EU Civil Service Tribunal (which deals with internal EU staffing disputes). The Court of Justice (COJ) serves as the main court. Established in 1989 to reduce the COJ's workload, the General Court rules on actions brought against European decisions concerning competition and commercial law. The Court of Justice (in short: Court) and the General Court both seat one judge from each member state. The Court is assisted by eight Advocates-General. Most cases are handled by a Chamber consisting of three to five judges. If the case is very delicate, the Full Court (minimum 15 judges) or the Grand Chamber (13 judges) deliberate. Chamber verdicts require a majority vote, but the final decision is signed by all judges; individual opinions remain the secret of the court.

The first woman, Simone Rozès from France, made her appearance at the Court in 1981 as an Advocate-General. No female judges were appointed

until 1999, when Fidelma O’Kelly Macken (Ireland) and Ninon Colneric (Germany) joined the bench. As of September 2010, five women serve on the Court of Justice (19 per cent), six (22 per cent) on the General Court and two (29 per cent) on the EU Civil Service Tribunal. Even though male judges are capable of issuing gender-sensitive verdicts, an almost ‘all-male bench’ remains a problem for two reasons (Kennedy 2002). First, balanced participation is imperative for maintaining the legitimacy of the Court. Public confidence in European law and in the Court’s rulings on gender equality, especially, is strengthened when both sexes share the bench. Second, each judge brings a specific cultural background, national traditions and experiences to bear on an interpretation. The same argument holds for women’s representation, to ensure their experiences will be taken into account. However, there is no obligation for member states to jointly ensure balanced representation on the bench.

The Court plays three roles. It acts as an umpire, rules on complaints and guides the national courts. First, the Court settles conflicts among European institutions or between member states and European institutions. Furthermore, the Court upholds the implementation of European treaties and law. If a member fails to transpose an EU decision into national law or violates community rules (for instance, by supplying illicit state subsidies), the Commission or another state can initiate *infringement proceedings*, taking it to Court. European rules sometimes require more far-reaching measures than the member states anticipate. In most cases (86 per cent), ‘misunderstandings’ are resolved by the offending state and Commission during the first, written stage of the procedure. If this does not produce the desired result, the Commission sends a ‘reasoned opinion’. If the member state still fails to take remedial action, the Commission files suit. The Court registers 400 cases annually. If the member state is found guilty of infringement, negative media coverage and a loss of prestige usually follow.

Should slights to its reputation not suffice to alter an actor’s behaviour, the Commission initiates a second infringement proceeding, after which the Court can impose financial penalties. The threat of multimillion Euro fines usually persuades the member state to comply. In 2000, when France occupied the EU presidency, the Court was on the verge of imposing a daily fine of 142,425 euros when that country failed to lift the ban on night work for women. The French government succeeded in convincing its utterly divided national parliament to act immediately by stressing the consequences for its reputation (van der Vleuten 2007). The Network of Legal Experts on Equal Treatment of Men and Women monitors the implementation of equality regulations in the member states and issues annual reports that may elicit action from the Commission. Between 1957 and 2008, the Court ruled in



Table 3.2 Infringement proceedings: gender equality directives (1958–2008)

Case No.	Parties: Commission v.	Issue, directive	Winner?
C-58/81	Luxembourg	75/117 Equal pay	Commission
C-61/81	United Kingdom	75/117 Equal pay	Commission
C-163/82	Italy	76/207 Equal treatment	Member state
C-165/82	United Kingdom	76/207 Equal treatment; transposition	both
C-143/83	Denmark	Art. 141 & 75/117 Equal pay	Commission
C-248/83	Germany	76/207 Equal treatment	both
C-312/86	France	76/207 Equal treatment, transposition	Commission
C-318/86	France	76/207 Equal access to jobs in the civil service	both
C-229/89	Belgium	79/7 Equal treatment social security	Member state
C-173/91	Belgium	Art. 141 & 76/207 Supplementary payments	Commission
C-197/96	France	76/207 Ban on night work	Commission
C-207/96	Italy	76/207 Ban on night work	both
C-187/98	Greece	Art. 141 Equal pay, discriminatory payments	Commission
C-354/98	France	96/97/EC Social security; transposition	Commission
C-457/98	Greece	96/97/EC Social security; transposition	Commission
C-203/03	Austria	76/207 Diving for women prohibited	both
C-519/03	Luxembourg	96/34/EC Parental leave	Commission

Source: Compiled by the author, adapted from Commission 2008.

17 infringement procedures involving gender equality, which in ten cases resulted in a victory for the Commission (see Table 3.2).

The Court's third role is to provide binding interpretations of European law, in response to requests from national courts for a so-called *preliminary* ruling (explaining how the COJ itself would rule, should it hear such a case). Between 1958 and 2008 the Court supplied interpretations of EU gender equality principles in 168 cases. German, English and Dutch courts have been most active in seeking preliminary rulings. The Court often produces an interpretation of European laws that differs from member state intentions at the time of adoption. The Tanja Kreil case (285/98) offers one such example: while the German government viewed military personnel as a national security issue, the Court decided that 'equal treatment in employment' warrants women's right to serve in the Bundeswehr in all capacities, not just as musicians or nurses. Following the ECJ ruling, Germany amended its

constitution, to grant women access to all Bundeswehr positions, including those involving the use of weapons.

Governments stand on the sideline in this game between national and European courts. National judiciaries usually follow 'Luxembourg'. Member states have recently blown the whistle on the Court, in declaring that new (intergovernmental) domains – foreign, security, defence policy – do not fall under its jurisdiction. The Court is also excluded from the OMC.

From a gender perspective, EU jurisprudence has always been most interesting. Analysis of rulings shows that the Court is not a feminist entity. Interpretations of European law are guided by two ideas. First, it seeks to defend its autonomy and authority vis-à-vis member governments and domestic courts, especially constitutional courts. It utilised a preliminary ruling (*Costa v ENEL*, Case 6/64) to affirm the *supremacy* of European law over national law. Second, it aims to act in the spirit of the treaties, thus contributing to integration by promoting peace and progress for all citizens. This has resulted in rulings protecting the rights of citizens and companies against unwilling governments, benefiting women in many cases.

The Court has more room for interpretation than holds for national courts, bound by a single constitution. European law is translated into all 23 official EU languages; due to minor (translation) differences between the texts, literal interpretations are not possible. European law is often open to multiple interpretations on purpose, for the sake of securing political acceptance in many different national contexts. The Court has used this room to maximise the implications of treaty articles and directives by 'stretching' central concepts, for example by stretching the concept of pay to include pensions as 'pay deferred' (*Barber v GRE (1990)*, Case 262/88). The Court cannot arbitrarily expand treaty articles and directives beyond the concepts embedded in them, however, lest it provoke negative reactions among national courts. Indeed, several rulings turned out to be less positive for women than anticipated, for example by limiting the entitlement to parental leave to women only (*Ulrich Hofmann v Barmer Ersatzkasse*, Case 184/83) and by accepting discrimination against lesbians (*Lisa Jacqueline Grant v South-West Trains Ltd*, Case C-249/96). The Court displays extreme caution in domains where EU competencies are limited, like social security and family law, which member states have repeatedly insisted are matters for national regulation.

## 6. Organised interests and social partners

A host of organised interests try to influence the European decision-making process alongside formal institutions. The expanding scope of EU policies has massively increased the array of European interest associations. An estimated 3,000 interest groups have their offices in Brussels, employing 15,000 lobbyists (Watson and Shackleton 2008). An overwhelming 62 per cent

of these groups represent private economic and business interests (including law firms), 20 per cent engage on behalf of broader, non-economic aims (environmental, human rights, women's rights, public health), while 18 per cent are linked to local or regional governments, non-EU country embassies and international organisations. Within each category we find powerful players commanding many resources, such as the Committee of Agricultural Organizations (COPA), German Länder or Business Europe. Yet even the big players must build alliances with other associations, MEPs and government officials in order to influence European decision-making. Lobbyists therefore spend much time developing and nurturing national and transnational networks. Here they obtain up-to-date information on relevant initiatives and actor preferences, in an effort to coordinate their standpoints and strategies.

There are several strategies for exercising effective influence. *Inside lobbying* is when interest groups try to obtain direct access to civil servants and politicians; *outside lobbying* means they aim to mobilise public opinion and the media. European institutions are less sensitive to demonstrations and opinion polls than national governments, since they do not risk electoral punishment; it is also more difficult and expensive to organise transnational strikes and demonstrations in Brussels than at national level. Inside lobbying is generally more successful, given the open nature of the European policy arena. Organised interests offer valuable information and expertise for the Commission and the EP. The early involvement of stakeholders in EU policy development increases the probability of correct implementation at the national level. MEPs often welcome extra information to better judge the quality and feasibility of a proposal. Offering access to citizens' rights groups like the European Youth Forum and the European Citizen Action Service also helps to enhance the MEPs democratic profile.

Informal channels for inside lobbying include all direct approaches to politicians and civil servants; potential influence is greater if lobbyists are involved earlier in the process, leading them to focus their attention on the Commission. Next, lobbying is directed towards MEPs, especially the *rapporteur* and the parliamentary committee examining a specific bill. Interest groups even provide MEPs with ready-made amendments for parliamentary debate: 24 single-issue groups have been formed on a cross-party basis, for example the Gay and Lesbian Rights Intergroup and the Intergroup on Racism and Xenophobia. These encompass interested MEPs and NGO representatives. They organise hearings, pose parliamentary questions and write letters of support or inquiry. The Council is far more difficult to approach. Accordingly, groups hoping to influence Council preferences lobby national ministries and their permanent representatives in Brussels.

Foremost among formal channels are the European Economic and Social Committee (EESC), the Committee of Regions (CoR) and the European Social Dialogue (ESD). The EESC, a tripartite advisory body already established in

the founding treaties, consists of a wide range of interest groups, among them trade unions, employer, environmental and consumer organisations. Women's interests are not represented by a specific group. The share of female members in the EESC is currently 23 per cent. The Commission must ask the EESC for advice on all policy proposals in domains such as environment, employment, gender equality, health, and consumers' affairs. The CoR, established in 1994 by the Maastricht Treaty, consists of local and regional authorities. Women presently constitute 19 per cent of the CoR members. The CoR's views must be solicited on all proposals of interest to local authorities. The EESC and CoR command little real influence, as they enter the decision-making process at a relatively late stage; accommodating internal conflicts of interests results in weakly compromised opinions that neither the Commission, the Council nor the EP are obliged to take into account. Since 1992 the ESD mechanism allows trade unions and employers to reach binding decisions pertaining to social affairs or employment. A recent Commission proposal allows representatives of workers' and employers' organisations to open negotiations. If they reach agreement, the Council may approve it in the form of a directive, as in the cases of parental leave and part-time work. The ESD has not proved very effective thus far, insofar as employers and workers often disagree; both prefer collective bargaining to legal regulation.

The EU is often criticised for its *democratic deficit*, which refers to the strong influence of powerful lobby groups, as well as to a broader lack of transparency in decision-making. The other side of the coin is that European decision-making remains a relatively open process, where even groups without national access, like representatives of the Roma, find an alternative arena where many can make their voices heard. In an effort to redress the over-representation of business interests, the Commission offers financial and logistic support, totalling over €1 billion annually, to several hundred NGOs; examples include the European Women's Lobby (EWL) and the European branch of the International Lesbian and Gay Association (ILGA-Europe). To increase transparency, the Commission opened a public register, requesting that all lobby groups provide information about their clients, funding and objectives. There are codes of conduct for MEPs and Commission officials regarding the receipt of gifts and relationships with outside interests. The EP website contains a register of lobbyists who can access parliamentary buildings.

The shift from national to supranational decision-making has created winners and losers. Groups who depend mainly on outside lobbying, like trade unions, have more trouble defending their interests in Brussels than women's organisations, whose expertise constitutes their primary power resource. Flexible network organisations function more effectively in a multi-level system than large, complex interest groups. Finally, the EU offers more opportunities to groups who hope to change national policies, while it is less

open to groups defending the status quo. All told, the EU offers opportunities to businesses and small, well-equipped non-governmental organisations in the environmental and human rights fields, while traditional mass organisations such as trade unions have lost influence.

Gender issues typically belong to the domain in which the EU has offered new points of access to decision-making, as women have much to gain from policy change and the weakening of vested interests. Women have primarily used inside lobbying, weaving a colourful network of groups, committed parliamentarians in the EP and civil servants in DG EMPL. During the early integration years, no transnational organisations pursued gender equality in relation to social issues. Mobilisation was carried out by individual feminists such as Éliane Vogel-Polsky, a lawyer who initiated the first court cases to press for gender equality (*Gabrielle Defrenne v Belgian State, Case 80/70*). Transnational groups growing out of grassroots feminist movements first set up camp in Brussels in the 1980s. The growth in EU rule-making and equality litigation contributed to the expansion and diversification of transnational women-centred networks. Between 1957 and 2003, 57 transnational groups pursued action in the field of gender equality (Cichowski 2007). The EWL was established in 1990 as an umbrella organisation for national coordination; constituents include the Deutscher Frauenrat, the Romanian Women's Lobby, organisations such as the European Federation of Women Working in the Home (FEFAF) and the Federation of Kalé, Manouch Romany & Sinté Women. It submits position papers and amendments on policy proposals and treaty reforms. The issue of domestic violence entered the European arena through pressure from the EWL and the EP. The EWL effectively coordinated national women's groups to push for implementation of the Beijing Platform. Its legitimacy, too, has been contested, due to the dominance of 'femocrats' and 'white middle-aged women from the old member states'.

The Advisory Committee on Equal Opportunities for Women and Men offers a formal access channel. Created in 1981, it draws individuals from national ministries focusing on equal opportunities and from national committees in charge of gender equality; and representatives of employers' and workers' organisations. Two EWL members attend the meetings as observers. Meeting twice a year, this Committee assists the Commission in formulating and implementing equality policies. It suffers from the same limitations as the EESC and CoR: its members have diverging interests hard to reconcile.

The favourite lobbying strategy is to pressure MEPs from the parliamentary committee FEMM and *rapporteurs*. The Parliament's Gay and Lesbian Rights Intergroup and the Intergroup on Ageing offer privileged access to NGOs addressing gender, discrimination and equality issues. Litigation entails a different strategy. National equality agencies and feminist legal activists, such as the British Equal Opportunities Commission and the German Association of Female Lawyers, support legal claims of women who feel that their 'European' rights have been violated. These claims reach the Court as

preliminary ruling requests. In many cases the rights of working women, for example regarding discrimination against pregnant workers and part-time workers, have been strengthened.

## 7. Gendering EU institutions: A complex system of checks and balances

It requires well-informed, well-resourced individuals to exercise influence in the EU, which would seem to reinforce unequal gender power relations. In spite of what citizens think, and despite what media or euro-sceptical politicians argue, the EU is not a super-state that only serves to concentrate huge amounts of power in the hands of Brussels' bureaucrats. Rather, the EU is rather a hybrid organisation, with intergovernmental and supranational characteristics. Its complexity stems from an effort to strike an institutional balance among three competing needs: for institutional capacity, political legitimacy and national control. Every institutional change promoting one of these objectives negatively influences at least one other aim. QMV has increased the EU's capacity for reaching decisions, but it decreases national control over outcomes. Enhancing democratic legitimacy by granting the EP co-decision powers reduces national control even further. Increasing national control through the subsidiarity principle, requiring the Commission to justify why a European instead of a national solution is needed, and the 'yellow card procedure'<sup>8</sup> slow down decision-making, and therefore the EU's capacity for governance. There are no easy solutions allowing the advancement of all three objectives simultaneously. One is stuck with a complex set of checks and balances. However, changes contributing to a loss of control by individual governments and national parliaments have not automatically concentrated power in the hands of Brussels' bureaucrats. The outcome has been a sharing (pooling) of power among member states, and between member states and supranational institutions.

How do women affect the European arena? Many authors credit women's growing presence in the EU arena with the success of gender equality policies (Hoskyns 1996; Kantola 2010a). But under what conditions do women become successful? In those cases where they can play a multilevel game (for a detailed account of the policy making process, see Locher in this volume), if they can mobilise nationally and build coalitions with transnational actors (European NGOs) and supranational actors (DG EMPL, MEPs), women can win, as governments are pressured from both directions and are caught in a very uncomfortable 'pincer action' (van der Vleuten 2005). This pincer action may have a legal character as well; activism vis-à-vis national courts, combined with monitoring by the Commission and the Court, may lead to the correct implementation of European legislation.

In order for the 'pincer' to work, one needs ideas and power at the national and supranational level, rendering women's presence in European institutions crucial. Committed individuals make a difference, be they

feminists in DG EMPL or in the EP, judges, Advocates-General or ministers from pioneer countries. But individuals need backing at both of these levels and pressure from women's groups, female party and parliamentary activists, feminists in trade unions and in ministries – all of whom bring power to bear on their ideas. Of course, this is a mutually reinforcing mechanism. Such strong pressures legitimised the institutionalisation of gender interests in the Equal Opportunities Unit (DG EMPL) and in the Committee for Women's Rights (EP). These 'institutions', in turn, strengthened women's advocacy groups, which no longer had to lobby for access or data; they could thus concentrate scarce resources on these openings in the supranational organisation, providing expertise and 'grassroots' information. Gender mainstreaming might actually increase the number of 'privileged points of access' to this complex system.

### Discussion questions

- Do you consider the EU a kind of super-state?
- Sometimes the European Court of Justice seems to act like a 'feminist court'; sometimes it seems to hinder the defence of women's rights. Elaborate on these two arguments and formulate your own position.
- To what extent and in what ways has the EU made it more or less easy for women's groups to defend and advance their interests?
- How might women's representation in the EU institutions be increased and strengthened?

### Notes

1. The European Central Bank and the Court of Auditors are not treated here.
2. Major exception: regarding foreign affairs and defence, the Commission shares the right of initiative with the Council.
3. Other procedures are applied in the fields of foreign affairs and defence. There the European Parliament only plays an advisory role.
4. For data on the representation of women and men in politics in Europe, see the Database 'Women & men in decision making', online: <http://ec.europa.eu/social/main.jsp?catId=764&langId=en>.
5. The Platform was the outcome of the 1995 UN World Conference on Women, setting out a number of actions to be taken by governments.
6. Not to be confused with the Council of Europe, which is not part of the EU. Established in 1948; that Council currently has 46 members and it is well-known for its involvement in minority rights.
7. Not to be confused with the European Court of Human Rights in Strasbourg, which is linked to the Council of Europe (see previous note).
8. That is, if at least one-third of national parliaments is not convinced that a specific European policy is necessary. In addition, national parliaments now have a right to bring a suit to the Court of the EU.