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Pincers and Prestige: Explaining the Implementation of EU Gender Equality Legislation

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This paper answers the question, under which conditions compliance with a supranational agreement can be obtained in cases in which a member state is unwilling to comply. It shows that the willingness to implement depends on the economic and ideological costs of policy change and on the amount of pressure exercised by societal actors. An unwilling state decides to comply when its prestige is at risk and it is 'squeezed between pincers', put under pressure by supranational and domestic actors simultaneously. An analysis of the implementation of EU gender equality policies in France, Germany, and the Netherlands between 1958 and 2000, shows that, depending on their identity, member states valued their prestige and were sensitive to pressure by the European Commission and the European Court. However, when their concern about prestige was not matched by domestic pressure, implementation remained predominantly rhetorical. Therefore, the Commission and the Court actively support political and judicial actors at the transnational and domestic level in order to make the 'pincers' work and obtain implementation in spite of high costs.
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Introduction

'I don't think that we would have agreed to this measure if we had known about the implications that it would have to the government now over the Equal Pay Act', exclaimed the British permanent representative in Brussels, when in 1982 his country was declared guilty of non-compliance with a European directive (Pillinger, 1992, 88).[1] Reluctantly, after years of resistance, the British government bowed its head to the European rules. Of course, the governments themselves approve European directives, but, as the British case shows, this does not mean that they are ready to implement them. This raises the question under which conditions compliance with a supranational agreement can be obtained in cases in which a member state is unwilling to

comply. Europeanization literature points at the role of adaptation pressure, which can be defined as the degree of institutional compatibility between domestic structures and practices and supranational requirements (Haverland, 2000; Knill, 2001). This approach might explain why a state is unwilling to comply, but it cannot explain under which conditions this previously unwilling state changes its behaviour and subsequently decides to comply. In this paper, I argue that the willingness to implement depends on the economic and ideological costs of policy change and on the amount of pressure exercised by societal actors. A state decides to comply against its original intentions not to do so when its prestige is at risk and it is 'squeezed between pincers', put under pressure by supranational and domestic actors simultaneously.

The domain of EU gender equality policies[2] provides an excellent case for testing the validity of the argument. First, gender equality policies are part of social policy, an area in which member states are protective about their policy autonomy since it constitutes the core of the welfare state. Therefore, states will be reluctant when compliance with supranational instruments requires policy change in this field. Secondly, gender equality is a highly contested issue since policy change may entail important political and economic consequences as well as ideological discord. Thirdly, the implementation record of EU gender equality policies varies strongly between states and across time, alternating stubborn resistance and compliance. It is precisely this variation in behaviour which requires an explanation involving the subnational, national and supranational levels. Spanning 40 years of EU gender equality policies, the empirical analysis provides an explanation of compliance and non-compliance in France, Germany[3] and the Netherlands.

The Domestic Level: Costs, Pressure and Prestige

We first consider the domestic level. The preference of a member state whether to implement a supranational agreement or not can be derived from a calculation based on the estimated economic and ideological costs of the policy change deemed necessary and from the extent to which its domestic actors have exercised pressure in favour of or against implementation.

The economic costs of implementation can be measured according to the anticipated consequences of policy change for the relevant aspects of the national economy such as the GDP, the export/import ratio, price development, employment, labour costs, and social security expenditure. The economic costs for implementing equal pay, for instance, vary according to the gap between men's wages and women's wages. Owing to state worries about its competitiveness, the economic consequences *as compared to* the economic consequences for other member states are relevant as well. Therefore,

the costs will be characterized as rather 'low' (1), 'intermediate' (2) or 'high' (3), according to their approximate absolute and relative levels.

Ideological costs may vary, depending on the structural patterns of ideas and ideologies found at the domestic level. First, the costs of implementation are generally lower in a state which strongly intervenes in the market and society and which has a large set of policy instruments at its disposal. The level of state intervention refers to the way in which a state defines its sphere of activities with respect to the market and society. Following Katzenstein (1985, 20), we can distinguish between liberal, corporatist, and statist states. These categories are not connected to the ideology of the governing party: they reflect a long-standing structural characteristic of a state, which influences the relative costs of the options a government has at its disposal. A statist state such as France intervenes strongly in its market and society. It has access to a wide variety of policy instruments. For such a state, there is a greater likelihood that the implementation of agreements will entail relatively few costs because it only has to implement a limited policy modification — a 'first-order change' (Hall, 1993). Corporatist states such as Germany and the Netherlands also have access to a broad range of policy instruments, but they have to negotiate with interest groups about the application and modification of such instruments. This increases the cost of policy change. A non-interventionist, liberal state such as Great Britain has access to a limited set of tools for policy change. If supranational agreements require the state to intervene, then there is a greater likelihood that a liberal state will have to introduce a new instrument — 'second-order change' (Hall, 1993).

Secondly, the ideological costs are related to the match between, on the one hand, the political programme of the government and the principles upon which domestic policy has been built, and on the other hand, the principles which have inspired the supranational policy proposal. When a supranational policy reflects ideas that clash with the ideas embedded in existing or planned domestic policies, implementation requires costly ideological reframing. Harmony between the ideological underpinning of the supranational proposal and domestic policy ideas implies relatively cheap implementation. From this follows that a government will prefer not to implement a supranational policy when implementation requires interventions that do not correspond to its structure of state intervention; or it requires ideological reframing of its policies. For each aspect, the relative ideological costs of implementation may be set at either 'low' (1), 'intermediate' (2), or 'high' (3).

To the extent that implementation will entail higher economic and ideological costs, a government will be less prepared to implement a supranational policy. Its willingness will be further influenced by the amount of pressure exercised by domestic actors. Socioeconomic interest groups,

political parties, social movements, protest groups, advisory bodies and experts will all exert pressure on the government if they expect far-reaching positive or negative consequences of policy change. This pressure will either increase or decrease the attractiveness of implementation, depending on the level of discord and harmony between the government and societal actors. Domestic pressure is estimated to be absent, limited, or strong, depending on the mobilization of different actors in favour or against implementation, the use of judicial pressure, and the link with the transnational and supranational levels. When transnational actors throw their weight behind domestic pressure, providing expert information, this increases its effectiveness (Keck and Sikkink, 1998, 12). Its effectiveness increases also when pressure comes from the political party or parties from which the government is comprised and their (potential) grassroots support, especially if elections are planned in the near future.

Prestige is the last domestic variable that is relevant here. Prestige is part of the power position of the state with regard to the nation and to other states. Since we assume that 'survival' is the primary objective or national interest of the state, safeguarding the state's prestige constitutes the ideological dimension of the national interest (Van der Vleuten, 2001, 50). The sources of prestige are state-specific, since they are linked to the national consciousness and the national identity of the state. Each state has its basis of identity-building, rooted in important negative or positive events of the past, enhanced and reproduced by the collective memory of the nation. The state confirms its identity every time it legitimizes its behaviour with reference to this identity. France derives its national identity from the principles of the French Revolution: *égalité* (equal treatment of citizens), *fraternité* (social rights, solidarity), and *liberté* (respect for the individual). Moreover, it perceives itself as an example for other countries, as the role model for all civilized nations. Germany does not derive its prestige from revolutionary ideals but from the protection of the fundamental rights of its citizens. Building the *Rechtsstaat*, it has surpassed the negative national identity produced by the Nazi regime. Based on its glorious past during the Golden Age, the Netherlands perceives itself as an 'open country' for goods (trade), people and ideas (tolerance). Depending on its national identity, a state will value a good performance in some issues more than in other ones. Keck and Sikkink show that in the realm of human rights '(…) certain aspects of national identity or discourse may make some states vulnerable to pressures' (Keck and Sikkink, 1998, 118–119). It is expected that the French government is vulnerable to accusations of social backwardness; the German government is vulnerable to accusations that it does not respect the fundamental rights of its citizens, while the Dutch government is particularly vulnerable to accusations of protectionism and intolerance.

The Supranational Level: Prestige and Pincers

Supranational actors can influence a state's decision to implement policy when they increase the value states attach to their prestige (reputation), and when they are able to mobilize domestic societal and judicial actors. In this way, they create simultaneous pressure from 'above' (the supranational level) and from 'below' (the domestic level). The government is then squeezed between 'pincers'.

Prestige is a source of power at the supranational level as well. The 'supranational prestige' of a state is constructed by the expectations held by other states that it will be capable of keeping its promises and carrying out its threats. When a state that greatly values its prestige prefers not to implement a joint agreement, it may initially ignore the agreement and hope that non-compliance will remain unnoticed. If this strategy fails, it can attempt to 'immunize' its reputation (Lieshout, 1995) by stating that the information about its behaviour is incorrect since it has in fact complied with the agreement according to its own standards. If this strategy also fails, and the expected cost of a damaged reputation exceeds the costs of compliance, a state may begin to implement the agreement (Van der Vleuten, 2001).

In general, an international organization can reduce the likelihood that non-compliance will remain unnoticed. The EU in particular has a monitoring system that makes it difficult for a state to play ignorant, and even makes it difficult for a state to immunize its reputation. After the Commission has detected a suspected infringement of Community law or has received a complaint, a dialogue is opened up between the Commission and the permanent representative of the member state. If the matter is not resolved, the Commission can send a letter of formal notice to the member state. If the government's response is judged inadequate, the Commission will send a 'reasoned opinion'. If this still does not produce a satisfactory result, the Commission will refer the case to the Court. The Court's judgment is binding for the member state. Prior to the Maastricht Treaty's amendments (1992), the Court had no powers to enforce its judgments. At Maastricht, the member states approved the British proposal that if the Commission under Article 228 EC (ex 171) starts a second infringement procedure and if the Court finds that the member state has not complied with its previous judgment, the Court may impose a lump sum or penalty payment on the state. A member state may continue to defy the court by not complying with the financial sanction. In spite of this, statistics show that most cases are settled during the first two formal stages.[4] In fact, member states will avoid an open conflict with the Court, as they generally benefit from a strong and impartial legal system. The Court should be strong enough to monitor the actions of the Commission. Moreover, it should be strong enough to reduce the transaction costs of

negotiations in an authoritative fashion and to solve problems of 'imperfect contracting' by applying general treaty regulations to unforeseen situations.

The reports which the Commission has drawn up regarding the state of affairs, inform the member states about each other's omissions. If the Commission ascertains non-compliance and invites the particular state to provide an explanation, the government is required to admit, justify, or refute non-compliance. It can no longer immunize its reputation by feigning ignorance. If only states had the competency to bring a member state before the Court, then member states would hardly ever be forced to acknowledge non-compliance.[5] States are reluctant to bring each other before the Court out of fear that this would focus attention on their own non-compliance or that it would damage mutual relations. The Commission, on the one hand, is quite eager to undertake action in order to keep up its credibility as guardian of the treaties. On the other hand, due to the intricate legislative process where 'the Commission proposes and the Council disposes' (jointly with the European Parliament if the codecision procedure applies), the Commission depends on the cooperation of at least a majority of the member states to see that its proposals are approved. Therefore, the Commission does not want them to oppose it as a bloc, and it will seek support among forerunner states and among domestic actors in the defaulting state. It has created transnational networks of experts and societal actors, which provide it with information and indirectly offer access to the domestic process.

The Court organizes support at the domestic level as well. As compared to an intergovernmental tribunal, it possesses a crucial asset since it can establish strategic transnational links with the domestic courts due to the procedure for preliminary rulings. This procedure (Article 234 EC (ex 177)) gives national courts the authority to refer questions to the Court concerning the interpretation of Community law. The Court utilized its authority to strengthen its mandate and the position of supranational law with respect to national law — and thus to national politics (Alter, 1998). It has created the following two 'pincers' which link the supranational and the domestic levels. The first is the construction of a transnational legal community, and the second is the direct effect of Community law.

The Court developed the first mechanism in order to utilize the instrument of preliminary ruling. It formally depended on the input by national courts, but the Court did not wait passively for them to come up with questions; it actively searched for their cooperation by inviting legal experts to Luxemburg. It was particularly the lower national courts that accepted the invitations of the Court, since they were eager to strengthen their position with respect to the higher domestic courts (Weiler, 1993). A transnational legal community subsequently developed that was willing to bring questions before the Court and to accept the far-reaching legal interpretations of the Court as opposed to

the more restricted political interpretations of the member states. A point worth noting is the activism of the British courts compared to the Euroscepsis of most British governments. Owing to the Court's interpretations, a supranational agreement may contain more far-reaching elements than the member states intended when they initially approved it. A state cannot ignore the broad interpretations by the supranational Court because its domestic court applies it.

The second mechanism, the direct effect, was established in the 1960s and 1970s due to preliminary rulings.[6] In the mandate provided by Article 234 EC (ex 177), intended to ensure the uniform application of European law, the Court found the judicial basis to rule that provisions of Community law are directly effective in that they create 'individual rights which national courts must protect'. The fact that international law can have a direct effect is not new in itself. The innovative aspect is that it was not the member states who decide which provisions of European law have a direct effect, as was customary in international treaty provisions, but it is the Court itself which takes this decision (De Witte, 1999).[7] The delegation of authority can have such unintended consequences without the delegating actor being able to easily undo this delegation (Hix, 1999). Owing to the direct effect, individual citizens and companies can file a complaint with a domestic court when their interests have been harmed because their government has not correctly implemented Community law. The court can award financial compensation if the 'supranational rights' of citizens or companies have been violated. Accordingly, the state thus faces the dilemma of whether to ignore the supranational ruling at the cost of further court cases and damage claims, or whether to proceed further by implementing the policy, contrary to its previous intentions to do so. Hence, by forging this link with the domestic courts, the European Court has increased the costs of non-implementation.

Explaining Implementation

To summarize the argument, the Commission and the Court have the capacity to increase the costs of non-compliance, thereby increasing the likelihood that states will implement an agreement. This is because the actions taken by the Commission endanger the prestige of a state, reducing the probability that non-compliance will go unnoticed and hampering immunization. Whether or not supranational enforcement will be successful ultimately depends on the collaboration of domestic societal and judicial actors and on state identity. The unwilling government will implement a Court ruling only if there is simultaneous domestic pressure or if its prestige is put at risk.

The validity of these expectations has been investigated by means of reconstructing the implementation process of gender equality policies in

France, the Netherlands, and Germany, three founding states of the European Communities. The empirical analysis has been split into three time frames: 1960–1970, 1970–1980, and 1980–2000. For each period, we will assess the costs of implementation, the amount of domestic and supranational pressure, and the role of prestige, in order to explain why states sometimes decide to comply with supranational instruments against their initial intentions to do so.

The 1960s — High Costs and no Pincers

The Treaty of Rome establishing the European Economic Community (1957), contained an article on the principle that men and women should receive equal pay for equal work (Article 119, now Article 141 EC).[8] Correct implementation of the article required introducing a judicially enforceable guarantee of the right to equal pay before the end of the first stage of the customs union on 31 December 1961. Collective agreements stipulating different wages for men and women were to be declared void and job classification schemes were to be fair and objective. It can be observed from Table 1 (see below) that the costs of implementation differed strongly between the member states.

France faced low costs. In 1946, the principle of equal rights was included in the French Constitution and the Minimum Wage Law of 1950 contained a single wage scale for both sexes. Moreover, there was less of a difference

Table 1 1960s: estimated costs of the implementation of Article 119 (now 141 EC)[a]

	France	*Score*	*Germany*	*Score*	*The Netherlands*	*Score*
Economic costs: gap men's pay — women's pay[b]	Difference of 10%	1	Difference of 27%	3	Difference of 31%	3
Ideological costs ((a + b):2)		1		2.5		2
(a) State intervention	*Statism*	*1*	*Corporatism*	*2*	*Statism*	*1*
(b) Compatibility with domestic policy frame	*Compatible: statutory equal rights, France as social role model*	*1*	*Incompatible: objective differences, equal pay for identical work*	*3*	*Incompatible: different needs philosophy, family wage*	*3*
Relative costs of implementing Article 119[c]		2		5.5		5

[a] 1 = low costs; 2 = medium costs; 3 = high costs.
[b] Commission 1961, V/1289/61 and V/6120/61.
[c] 2 = low costs, 3–4 = medium costs, 5–6 = high costs.

between men's wages and women's wages than in other member states. Nonetheless, the Commission's reports showed that systematic wage discrimination was also prevalent in France (Commission, 1963, V/3479/63). The trade unions disagreed, arguing that low women's wages were due to a lower organization level and the lack of education among women. The government stated that the 10% difference in women's and men's wages was related to objective differences in performance, the number of years of employment and the skills level; therefore, there was no discrimination against female workers in France. The best proof of this was that not a single woman had submitted a complaint concerning unequal pay during the past few years (Commission, 1965, V/COM(65)270). The government deliberately ignored the fact that women were *unable* to complain because the classification of jobs was too poorly specified. As a self-declared socially progressive state, it was important to France that it not be blamed for having poorly implemented Article 119, which had been inserted in the Treaty only due to French pressure (Van der Vleuten, 2001). In 1964, the government prepared a law stating that each wage agreement which neglected to respect the principle of equal pay should be declared void (Commission, 1964, 10760/V/64). The French parliament did not deal with the equal pay law until 1972, but the government was able to save its reputation merely by referring to its intentions to fully implement Article 119. Domestic pressure for improving the labour market position of women increased, and responding to the 'awakening of the nation' the government created in 1965 the *Comité d'études et de liaison pour les problèmes du travail feminin* (Expert Committee on Women's Work), including independent experts, representatives from the trade unions and from women's organizations (Commission, 1966, SEC(66)1797).

In Germany, policies reflected the Christian-Democratic philosophy that men and women are different and should be treated differently. The husband was the breadwinner; the civil code stipulated that the wife *could* work outside the home if this did not hamper her marital and family duties (section 1356 Civil Code) and was *required* to work if her husband's income was not adequate to support the family (section 1360 Civil Code). When in 1966 a recession hit Germany, unemployment was reduced by sending women back to 'hearth and home' (Krasnogolovy, 1968). Job classifications made in accordance with 'objective scientific criteria' (which however differed between regions and branches) systematically assigned lower value to work done primarily by women (Commission, 1960, V/7154/60). Women were paid a lower piecework rate on a structural basis because they were supposed to produce less than men. In spite of a 25–30% difference between men's wages and women's wages, the government claimed that the principle of equal pay was correctly implemented for *identical* work under *identical* circumstances (BT 1961, Drs 4/2899), deliberately changing the wording and meaning of Article 119.

In the Netherlands, as in Germany, implementing equal pay would entail high costs. Collective agreements discriminated openly by stipulating different wages for men and women. All male workers received a 'family wage', whereas it was found to be justifiable that women were paid less than men, since women had different needs: they did not have to support a family with their wages (Van Eijl, 1997). There was no statutory equal pay provision and women did not have any judicial option for fighting wage discrimination. Until 1968, the Netherlands had a controlled wage policy, and a simple government guideline would have eliminated formal wage discrimination. However, the Dutch government maintained that 'the situation was not yet ripe' for equalizing the wages of men and women (Handelingen, 1966–1967, 8606, 2). Its prestige was not at risk, since at the signing of the EEC Treaty in March 1957, the Netherlands made a declaration concerning Article 119 which stated that 'the Netherlands shall not be required to go further in this matter than that which has in fact been realized in France' (MAE, 945 f/57, 6 May 1957). Thus, the government delayed implementation endlessly by asking for statistical material that proved whether France and the other member states had satisfied their obligations (BAC 006/1977, Letters from Minister Veldkamp to the Labour Foundation, 18.1.62, 21.2.62, and 1.12.64). So, high economic and ideological costs hampered the implementation of wage policy in two of the three countries under investigation. Employers strongly objected to implementation, while domestic pressure in favour of implementation was weak. The concern of the Dutch and German trade unions for equal pay was primarily rhetorical. They complained, but they continued to approve collective agreements with different pay scales for women and men.

Supranational pressure remained insignificant as well. Giuseppe Petrilli, the Commissioner in charge, first commissioned a study into the Commission's authority concerning Article 119 (BAC, 008/1966, Memorandum Petrilli, 23.4.59, III/a/3954; Letter Dörr to Leleux, 28.4.59). He was told that the Commission did have the right to bring the matter before the Court, but the legal service did not recommend that this procedure be enforced because an open conflict between the Commission and the member states was better avoided (BAC 008/1966, Note service juridique, 11.5.59). The Directorate General of Social Affairs (DG V) disagreed with the legal service (BAC 008/1966, Memorandum Toffanin, 14.5.59). However, Petrilli decided that the Commission should limit itself to collecting information. Accordingly, each year the Commission published a report on the state of affairs. Based on its conclusions, the Commission appeared to be justified in taking all six member states to the Court. However, the Commission believed it could only initiate an infringement procedure if the government itself had not taken the necessary measures. It recoiled from initiating a procedure against France, which did not offer adequate judicial protection, because the situation in France was less

serious than in Germany, where non-implementation was attributed to the lack of action of the employers and trade unions (BAC 006/1977, Reminder from Toffanin for the 324th meeting of the Commission, 5.7.65). As a result, the Commission did not start a single infringement procedure and the Court was left empty-handed. Since domestic pressure was too weak to raise costs of non-implementation, the 'pincers' simply did not work. The 1961-deadline mentioned in the Treaty was replaced by a series of deadlines for implementation in stages to be completed in 1968. However, in 1970 the Commission concluded in its report that no state had fully complied with Article 119. Nonetheless, all of the member states argued that they were not guilty of non-compliance. The Netherlands questioned the data provided, Germany argued that intervention in wages was not within government competence and France referred to its intentions to make new legislation. Each critical Commission report was promptly censured by the Committee of Permanent Representatives of the member states (compare for instance Commission, V/13206/64 and Commission, V/COM(64)11).

The 1970s: Changing Costs, Pincers at Work

In 1971, the implementation of Article 119 had reached an impasse. The Commission was even compelled to postpone the publication of the next report on the implementation of equal pay because the member states refused to provide recent figures. In the report that was finally published in July 1973, the Commission announced that it would start infringement procedures against every member state that did not comply with Article 119 and that it introduced a new binding instrument for equal pay (Commission, 1973, SEC(73)3000). Three factors explain this sudden change from supranational passivity to activism.

First, in all member states, the women's movement had placed equal pay on the national agenda and insisted that 'the Commission should resume the battle for equal pay and, more generally, equal employment rights' at the supranational level (Nonon and Clamen, 1991, 61). Pressure from the women's movement strengthened the position of the transnational network of national experts and officials of DG V that had developed around Article 119. The Commission seized the opportunity to strengthen its own position by acquiring the political support of a group that was still getting an inadequate response at the national level. Second, the equal pay strike in the Belgian arms factory in Herstal motivated two lawyers, Eliane Vogel-Polsky and Marie-Thérèse Cuvelliez, to test the direct effect of the equal pay provision in the Treaty. Their activism resulted in three preliminary rulings concerning Article 119. In the first one, the Advocate General argued that Article 119 formulated an obligation that was sufficiently precise to have a direct effect (Case 80/70,

Defrenne I). The Court would rule on this issue only in 1976 (*Defrenne II*), but the signal to the legal service of the Commission was clear; if it started an infringement procedure against the Netherlands, the Court would support it. Third, in January of 1973, a new Commission began work. 'Social Affairs' was assigned a separate portfolio, presided by the ambitious Irishman Patrick Hillery. Newcomers who wanted to utilize optimally 'the social mandate' of the Commission replaced several conservative top officials in the DG V (Hoskyns, 1996).

Domestic Pressure: Women on the Move

Compared to the previous decade, the cost–benefit calculations concerning equal pay legislation and the amount of pressure changed in France and in the Netherlands (see Table 2).

In France, 'May '68' offered a platform for the *Mouvement pour la Libération des Femmes* (Women's Lib) to make its demands heard. There were strikes all over the country for equal pay and better terms of employment for women (Callet and du Granrut, 1973, 13). Opinion polls showed that equal pay was the most popular measure for improving the status of women (Mazur, 1991, 125). The Expert Committee on Women's Work issued a draft law on equal pay, inspired by the British Equal Pay Act and taking into account the

Table 2 1970s: estimated costs of the implementation of Article 119 EC (now 141 EC)[a]

	France	*Score*	*Germany*	*Score*	*The Netherlands*	*Score*
Economic costs: gap men's pay — women's pay[b]	Difference of 21.3%	2	Difference of 30.3%	3	Difference of 35.4%	3
Ideological costs ((a + b):2)		1		2.5		1.5
(a) State intervention	*Statism*	*1*	*Corporatism*	*2*	*Corporatism*	*2*
(b) Compatibility with domestic policy frame	*Compatible: statutory equal rights and 'new society'*	*1*	*Incompatible: objective differences, Wahlfreiheit*	*3*	*Compatible: share (…) income*	*1*
Relative costs of implementation of equal pay provision[c]		3		5.5		4.5

[a] 1 = low costs; 2 = medium costs; 3 = high costs.
[b] 1972, Hourly wages in industry (source: Saunders and Marsden, 1981).
[c] 2 = low costs; 3–4 = medium costs; 5–6 = high costs.

criticisms of the European Commission. The reform programme of Prime Minister Jacques Chaban-Delmas, called 'The New Society', offered the right framework for new legislation in the field of gender equality. On 21 November 1972, the parliament approved a strong Equal Pay Act.

In the Netherlands, due to the support of women's groups such as *ManVrouwMaatschappij* (MVM) and *Dolle Mina*, the quest of women members of trade unions campaigning for equality gained more attention. During the 1972 parliamentary elections there was a spectacular drop in the traditional female support for the Christian Democrats.[9] Partly due to the shift of the women's vote, a coalition of progressive parties and Christian Democrats came into power under the leadership of social–democrat Joop den Uyl. His motto, 'share knowledge, power, and income,' offered a link to the demands the women's movement was making. In October 1973 MVM organized a postcard campaign begging Den Uyl to take the women's issue seriously and to introduce gender equality legislation just as in the United Kingdom. The failure of the Optilon strike[10] in March 1973 had made it clear how difficult it was to ensure equal pay by means of a collective agreement. Therefore, the tripartite Socio-Economic Council (SER) recommended that the government introduced statutory equal wage regulation (SER, 1973). Moreover, in November 1973, the European Commission sent the government a formal notice which started infringement proceedings against the Netherlands. The plight of being the first government to be condemned by the Court because women had been discriminated against, would have painfully damaged Den Uyl's credibility as leader of a 'progressive' government. The government finally took the necessary measures, and on 20 March 1975, the Dutch Equal Pay Act went into effect.

In Germany, shifts in the female electorate resulted in the social democratic SPD becoming the major governing party. Although women still earned 30% less than men did, there was no strong pressure in favour of equal pay legislation. The women's working groups in the SPD were unable to persuade their own party, let alone the government, that the German Constitution offered insufficient protection for women's rights. The trade unions advocated equal pay and fair job classification schemes, but they opposed equal pay legislation because they were afraid of losing their bargaining autonomy. The government argued that it had to respect the autonomy of employers and trade unions. Even a branch of the women's movement was reluctant to support the demands for equal rights on the labour market, and preferred instead to emphasize the *difference* between men and women (Ostner, 1993, 94). When unemployment increased rapidly in 1974, the government preferred to emphasize the *Wahlfreiheit* (free choice) of women between paid and unpaid work, rather than to endorse the rights of female workers. There was no supranational pressure, as the European Commission recoiled from starting an

infringement procedure in which it would have to convince the Court that the German Constitution and the German courts had failed to provide sufficient guarantee for individual rights. Implementation did not materialize.

1980–2000: Judicial Pincers

At the end of the 1970s, the member states faced deadlines for implementing three directives on equal pay and equal treatment of women and men.[11] Unlike the 1960s, the Commission took its monitoring role seriously, since in April 1976, it had been blamed by the Court for negligence. Although the Court ruled that Article 119 had a direct effect (Case 43/75, *Defrenne II*), it limited the retroactive effect to the date of its ruling because the member states had been able to violate Article 119 without the Commission initiating an infringement procedure. The fact that the Commission could not act against all forms of non-compliance did not justify its lack of action against any form of non-compliance (ECR, 1976, 481). From that time on, the Commission initiated an infringement procedure against each member state that formally had not correctly implemented a directive. Between 1980 and 1990, the Commission sent 19 letters of formal notice concerning the three gender equality directives. Of these cases, 11 were settled by correspondence between the Commission and the member state. Eight cases were referred to the Court. The 'supranational equal rights commission' at DG V, the Equal Opportunities Unit (Unit), played an active role in preparing infringement procedures. The Unit also set up a transnational network for national equal opportunities commissions, resulting in the establishment of the Advisory Committee on Equal Opportunities for Men and Women in 1981. The Unit had hoped that the Advisory Committee would function as a transmission belt between the supranational and the national levels, but this did not come about since it lacked a mobilizing strategy (Hoskyns, 1996). Accordingly, the Commission focused on the strengthening of transnational judicial instead of political pressure. It established a transnational network of legal experts.

At the national level, victims of discrimination submitted complaints more and more frequently. National courts seized the opportunity to cite European provisions and to ask the Court for its interpretation. Between 1980 and 1990, national courts referred 28 cases to the Court that concerned equal pay and equal treatment; between 1990 and 2000, 102 cases. German courts referred 33 cases, and Dutch courts 21. In contrast, French courts asked the Court for only five preliminary rulings in the area of equal rights, the first one in 1991. The difficult access to the French courts and the lack, due to the resistance of the trade unions, of an independent equal opportunities commission that could support discrimination victims, explain this situation (Tesoka, 1999). How effective was judicial and political pressure?

France: a Lengthy Process

The Commission started two infringement procedures against France. The first procedure concerned the exclusion of women from certain jobs in the police force, in the prison system, in the customs service, in physical education and in sports. During the written Court procedure, France shortened the list of exceptions in steps. In the end, the Court only had to evaluate those jobs pertaining to the police force and the prison system. France feared that an excessively high percentage of women would 'seriously erode the credibility' of the police force (ECR, 1988, 3566). The Commission argued that it was not sex, but physical suitability, that should be decisive for certain police jobs and that it had not been proven that women were unable to act against violent behaviour. In June 1988, the Court ruled that the Commission was correct in regard to the job groups with the police force, but not with respect to the directors of small prisons (Case 318/86). In accordance with the court decree, France abolished separate male and female recruiting except for the latter category.

The second infringement procedure was concerned with the failure to eliminate protective measures (Case 312/86). France defended itself by using the argument that the trade unions had asked for these provisions in the interest of women in order to allow them to combine work and family life, and that the provisions had contributed to an increase in the birth rate (ECR, 1988, 6315). The Court rejected both of these arguments because the 'special measures for women' covered an excessively broad area, and it was unacceptable that 9 years after the deadline stipulated in the directive, there was still no time limit for eliminating protective measures. Between 1984 and 1987, the provisions in 16 collective agreements were amended, which was an 'extremely modest' number compared to the 3,450 collective agreements that were concluded in 1983 alone (ECR, 1988, 6315). Owing to the implications of the Court ruling for its prestige, France passed a law requiring the trade unions and employers to adapt collective agreements within two years (JO, 1989, 14 July, 8872). However, as the law contained no sanctions, implementation was merely rhetorical; employers and trade unions did not feel constrained to eliminate protective measures. The 'pincers' did not work as long as there was no national pressure in favour of implementation. An employer, Alfred Stoeckel, set the pincers in motion. He was accused of violating the French Labour Code because he had employed women during night shifts. He defended himself by arguing that the Labour Code had contravened the Equal Treatment Directive. In the first preliminary ruling ever on a French gender equality case, the Court ruled in favour of the complainant (C-345/89). Hence, in 1992, the socialist Minister of Labour, Martine Aubry, proposed a law to establish similar labour conditions for women and men, but the parliament

rejected the proposal. In March 1994, the Commission started a new infringement procedure. France argued that the Labour Code article was no longer effective due to the direct effect of the 1976 Directive, so there was no need to repeal it. The Court dismissed the argument, because 'the incompatibility of national legislation with Community provisions (…) can be finally remedied only by means of national provisions of a binding nature' (ECR, 1997, I-01489). The Commission used the prerogatives it had obtained in 'Maastricht', and on 21 April 1999, it asked the Court to impose a fine of 142,425 euros per day for the non-implementation of the earlier judgement (Case 224/99). The French government did not wait for the Court ruling. In 2000, Minister Aubry (again) proposed a law to implement the directive. Trade unions and women's organizations were split on the issue; employers emphasized economic arguments in favour of lifting the ban (Reuter and Mazur, 2003). After a 'lively' parliamentary debate, in May 2001 the ban on night work for women was repealed (JO, 2001, 10 May), and Case 224/99 was discreetly removed from the Court's register. France could not bear to be the first member state condemned to pay a fine due to non-compliance in the domain of social affairs. The force of pressure from both sides and concern about its prestige made France comply.

Germany: the Court and the Constitution

In spite of the criticisms it received by trade unions, women's organizations, and the Commission, the German government had always maintained that it had satisfied the requirements of Article 119 and the directives, due to the provisions in Article 3 of the Constitution.[12] In 1979, the Commission sent the German government two letters of formal notice, arguing that the government had been unable to declare discriminatory provisions in collective agreements to be invalid and did not have 'effective means' for ensuring compliance with the equal pay and equal treatment directives. There came no reply from the government. The Commission took the next step and sent a 'reasoned opinion'. When the Commission threatened to refer the case to the Court, the German government promised that it would introduce new legislation. The criticism of the Commission made it plausible that the Court had sufficient cause to condemn Germany. Moreover, in *Defrenne III* (Case 149/77), the European Court had asserted that the 'abolition of discrimination based on sex' must be considered as a fundamental Community right (ECR, 1978, 1365). Receiving a condemnation because of its lack of respect for the fundamental rights of its citizens would be especially painful for Germany, since it had claimed in several cases that German law better protected fundamental rights than Community law (see, for instance, Case 44/79, *Hauer*). The Commission's warnings coincided with the strong political pressure felt at the national level.

Parliamentary elections were approaching. Equal pay was the central focus of a series of court cases on behalf of 29 women employed at the *Heinze* photographic laboratory (Doormann, 1983). The government submitted a bill to parliament to avoid receiving condemnation by the Court and to take the wind out of the sails of the women's movement and the women associated with the SPD and the trade unions. The resulting act, titled 'EC Labour Law Adaptation Act — Act Concerning the Equal Treatment of Men and Women in the Workplace' of 13 August 1980 was, as its name indicates, intended mainly to satisfy the obligations of the European directives. Still it involved more than just rhetorical implementation since the act explicitly forbade lower pay for work of equal value (instead of the more limited 'identical work') and direct as well as indirect discrimination.

Further progress resulted from preliminary rulings. The problem of *Leichtlohnarbeit* (the underpayment of physically 'light' work) was settled in *Rummler* (Case 237/85). The Court ruled that work could not be defined as being either heavy or light on criteria that were based on the physical efforts that a specific sex can exert. As a result, the German Federal Labour Court ruled that classifying jobs based on physical strength was no longer permissible and that all forms of effort must be included. Owing to another preliminary decision, the 'practical importance' of the EC Labour Law Adaptation Act increased significantly. German legislation required an employer, who had been convicted of discriminating against a job applicant, to only reimburse the expenses of the applicant, which usually amounted to 2.31 DM for the postage stamp and photocopying the letter of application. In *Von Colson and Kamann* (Case 14/83) and a similar case (*Harz v. Deutsche Tradax*, Case 79/83), the Court ruled that a damage reimbursement should have an 'avertive' effect. As a result, Von Colson and Kamann each received 21,000 DM instead of 2.31 DM.

Even the German Constitution had to be amended. In July 1998, the *Verwaltungsgericht* Hannover (Administrative Court) asked the European Court for a preliminary ruling on the interpretation of the Equal Treatment Directive (76/207/EEC) (Case 285/98). Tanja Kreil applied for work in the maintenance (weapon electronics) branch of the *Bundeswehr*. Her application was rejected on the ground that Article 12a of the German Constitution excludes women from the armed service. Women can enlist only in the medical and the military-music services. Supported by the British and the Italian governments, the German government argued that Community law does not govern matters of defence, 'which remain within the member states' sphere of sovereignty' (ECR, 2000, 144). Moreover, even if the Directive could apply to the armed forces, the exclusion of women from certain posts was justifiable under Article 2 of the Directive concerning the protection of women, particularly as regards pregnancy and maternity. In January 2000, the Court, which for this important issue was composed of no les than nine judges, ruled

that the complaint of Kreil was valid. The ruling caused quite a political stir. 'Soon the equality directive will force upon us that the next Chancellor is a woman', Edmund Stoiber, Prime Minister of Bavaria, quipped (Weinlein, 2000, 7). Many women immediately applied for jobs in the *Bundeswehr* (Hühn, 2000, 9). The European Court resolved a *Selbstblockade* of German politics; the issue of the position of women in the army regularly surfaced in political debate since the end of the 1970s, but it had always encountered resistance from Christian-Democrats and Greens because of the need to respect 'the nature and destiny of women' and of fear for the 'militarization of society' (cited in BT PlPr, 2000, 27 October, 12341–12345). Owing to the *Kreil* ruling, the German Ministry of Defence decided to lift the limitations in the Soldiers Law concerning the employment of women in the *Bundeswehr* (BT Drs, 2000, 14/3072, 29 March, 2). However, the Court ruling clearly required the amendment of the Constitution as well, in order to avoid further cases before the German courts. On 27 October 2000, the *Bundestag* approved the bill amending Article 12a by a large majority, and on December 1st, the *Bundesrat* confirmed the amendment. However, both members of parliament and legal experts accused the European Court of *Kompetenzverstoß*, an illegal extension of its competences to security issues, which disqualified the *Kreil* ruling as a legal basis for the amendment to the Constitution. The impression had to be avoided that they bowed to the Court ruling (BT PlPr, 2000, 27 October, 12340). Therefore, MPs argued that it was *not* the European ruling but 'a changed attitude in German society concerning voluntary service for women in the army' that required the sudden revision of the German constitution (BT Drs, 2000, 14/4380, 24 October, 3; BT PlPr, 2000, 27 October, 12339 and 12343). The prestige of the German *Rechtsstaat* had to be secured.

The Netherlands: Incremental Implementation

A stable coalition of Christian-Democrats and liberals ruled the Netherlands between 1982 and 1989. The liberalization of the economy and the reduction of government spending were its top priorities. The position of women in society could be improved by eliminating obstacles, not by introducing equal rights legislation. Therefore, a great amount of pressure from both sides was necessary to push the government to comply with the EC equality directives. The women's organizations and the trade unions supported claims before the national courts. The Commission started several infringement procedures, concerning equal pay for civil servants, discrimination of non-breadwinners, and the large exceptions to equal treatment accepted by Dutch legislation. In order to avoid condemnation by the Court, the Dutch government repaired existing legislation in a piecemeal fashion, it introduced a limited equal treatment bill and some legislation for specific groups, resulting in a 'frayed

patchwork of regulations' (Emancipatiekommissie, 1981). In August 1988, 10 years after the implementation deadline of the Equal Treatment Directive, the government finally offered the parliament the definitive Act of Amendment, which allowed the Netherlands to satisfy the requirements of the equal pay and the equal treatment directives (Handelingen, 1987–1988, 19908, 5436).

Further progress was realized due to the continued judicial and political pressure, resulting in several preliminary rulings. In *Liefting* (Case 23/83), the Court ascertained that pension contributions were indeed considered to be wages and that Dutch legislation was not in accordance with Article 119. This caused a great deal of commotion in the government, which feared thousands of claims from female civil servants. The government mailed a circular to the relevant services stating that they were not required to agree to such requests since the judgement of the Court was only binding for the nine women who had submitted a complaint. However, the court ruling was given a great deal of publicity. It led to new legal proceedings and questions in parliament. The government at this point decided to abolish the discriminatory provision (Prechal and Burrows, 1990, 238).

As the Dutch social security system was based on the concept of the husband as head of the family and the wife as a dependent partner, the EC social security directive (79/7) brought the government into major problems. It amended regulations by assuming that for every type of benefit the family income would be supplemented with extra payments to the dependent spouse. The government did not appear to realize that a provision formulated in a sex-neutral fashion could lead to indirect discrimination if in practice it primarily affected employees of a specific sex. In several preliminary rulings,[13] the amended acts came under fire. In all of these cases, the Court rulings supported the position of the claimant against the Dutch government. In order to avoid further claims, the government reluctantly amended the regulations.

The ruling of the Court in *Barber*, a British case, provoked a different reaction at a different speed; the Dutch government seized the first possible opportunity to limit the effect of Treaty Article 119. A British court had asked whether pensions should be considered as wages as defined in Article 119; the Court answered on 17 May 1990 in the affirmative (Case 262/88). Based on the decision, many female employees could claim equal treatment in pension schemes with retroactive effect until April 1976 (*Defrenne II*-ruling). Pension funds in Germany, the United Kingdom, and the Netherlands calculated that this court ruling would cost them some 100 billion euros. They exerted strong pressure on the Commission and national governments to intervene. The Dutch government was extremely motivated to do so. In view of the magnitude of the discrimination against women in pension schemes in the Netherlands, the right to equal treatment from 1976 would certainly have important financial consequences (Emancipatieraad, 1991). The Dutch government

decided to use its position as Chair of the EC to put the issue on the agenda of the negotiations concerning the 'Maastricht' treaty reform, and 'to make amendments to the wording of Article 119' (Agence, 1991a, 5). The European Parliament, women's organizations and members of the Dutch parliament protested (Schaling, 1991; Agence, 1991b). Nonetheless, in Maastricht the member states agreed to add a protocol to the Treaty, stating that pension rights were not to be considered as wages until 17 May 1990, but thereafter they were to be. Obviously, the wording of the protocol went against every form of logic. The Netherlands maintained the 'tradition' that it had established in 1957, when it made its declaration limiting the implementation of Article 119. Each time when the costs of equal rights for women became too high, every judicial trick in the book to avoid implementation was permissible. For the Court, it was a 'boomerang experience', in which a ruling extending the scope of a treaty article had resulted in just the opposite; the restriction of the scope.

Conclusion: Pincers and Prestige

The present study shows that we can explain the decision of an unwilling government to implement a supranational agreement by a model including both supranational and domestic actors, and taking into account the prestige of the state.

Figure 1 pictures preference formation of a state concerning implementation of a supranational agreement. The preference may be calculated based on the economic and ideological costs resulting from policy change. The decision whether to implement is also influenced by the importance a state attaches to its

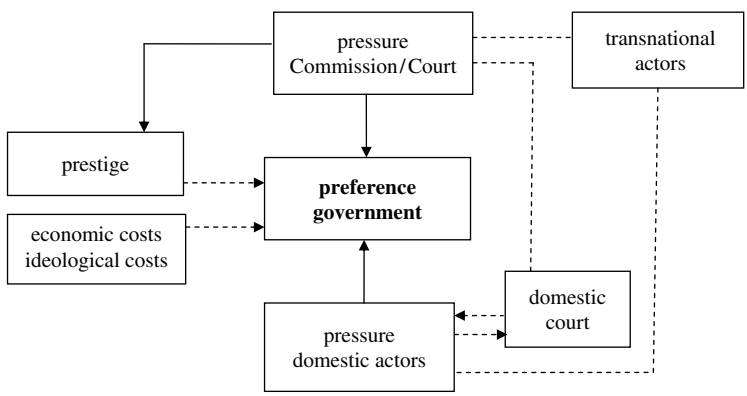

Figure 1 Preference formation concerning implementation.

prestige. Depending on its identity, a state may value its prestige to a larger or smaller extent. The attractiveness of implementation is further influenced by the pressure of domestic and possibly transnational actors. Supranational pressure is effective when there is simultaneous domestic pressure, political or judicial. The latter refers to the mechanism of preliminary rulings, where domestic courts request an interpretation of Community law by the European Court and governments are constrained by their own courts to respect European rules.

Operationalizing state preferences concerning the implementation of specific EU policies in terms of the economic and ideological costs of policy change has proven to be very useful for understanding their willingness to implement the policy. When relative domestic costs were rather high, governments preferred not to implement the policy (Germany and The Netherlands, 1960s). They changed their minds when two mechanisms were at play: first, the influence of supranational monitoring and enforcement procedures on the prestige of the state and second, the pincer mechanism of double pressure.

As regards the first mechanism, member states indeed attach much value to their prestige. They attempt to 'immunize' their prestige. They legitimized their non-compliance with the argument that there were no reliable data (The Netherlands, 1960s) or that the intervention requested was outside their authority (Germany, 1960s and 1970s; France, 1980s). This tactic worked as long as the Court was not involved. When as a result of a preliminary ruling or an infringement procedure, condemnation by the Court became imminent, governments considered this to be so damaging to their prestige that it caused them to 'surrender' and to modify their legislation. They were sensitive to such condemnation when their reputation as a 'progressive government' was at stake (The Netherlands, 1973), as the 'guardian of fundamental rights' (Germany, 1980 and 2000), or as the 'role model for social policy' (France). However, when concern about prestige was not matched by domestic pressure, implementation remained predominantly rhetorical (compare France, 1964 and 1989 with France, 1972 and 2000).

As regards the 'pincers', the second mechanism, Table 3 presents an assessment of the strength of domestic and supranational pressure. Pressure resulting from preliminary rulings is counted as supporting those who mobilize in favour of implementation against unwilling governments.

I discussed three cases in which the government opposed implementation while a majority of social actors favoured implementation: the Netherlands in the 1970s, and Germany and the Netherlands in the 1980s. National pressure led to implementation only when simultaneously the supranational institutions had exerted strong pressure. Most notably, in the 1980s the judicial pressure that resulted from infringement procedures and preliminary rulings amplified political pressure by political parties, the women's movement, and the trade unions. Governments found it more attractive to comply, instead of being

Table 3 Pressure concerning the implementation of EU equal rights policies[a]

Period: I = 1960s, II = 1970s, III = 1980–2000	*France*			*Germany*			*The Netherlands*		
	I	*II*	*III*	*I*	*II*	*III*	*I*	*II*	*III*
1. Domestic social groups, pressure opposed	–	+	+ +	+ +	+ +	+ +	+ +	+	+ +
2. Domestic social groups, pressure in favour	+	+ +	+	–	+	+ +	–	+ +	+ +
3. National courts request preliminary decisions (number of cases)	–	–	+ (5)	–	–	+ + (33)	–	–	+ + (21)
4. Supranational pressure (critical report (+); infringement procedure (+ +))	–	+	+ +	–	–	+ +	+	+ +	+ +
Pincers?	No	Yes	Yes	No	No	Yes	No	Yes	Yes

[a] – (none); + (limited); + + (strong).

confronted with a large number of court cases (cf. *Liefting, Stoeckel, Kreil*). The 'pincers' resulted in the member states modifying legislation in the field of gender equality against their initial intentions to do so. When supranational pressure is not met by domestic pressure (France, 1980s), the government does not go beyond 'rhetorical implementation'. This explains non-compliance in the 1980s in France, because societal pressure in favour of implementation was lacking. The supranational institutions under investigation seem to be well aware of the crucial importance of pincer mechanisms. The Commission actively supported the establishment of transnational judicial and political networks. The Court has sought the involvement of national courts in developing a European legal area.

Now to what extent are these findings valid for other policy issues, other policy instruments, and other member states? In the first place, the effectiveness of the pincers depends on the competences given to the Commission and the Court. The pincers cannot work in those domains where the Court has no say (like in Common Foreign and Security Policies) or where the Commission has no powers to bring states before the Court (like in issues that are subject to the Open Method of Coordination). In the second place, the pincers will not squeeze hard enough to influence implementation in those countries where the access to the domestic judicial system is difficult for those whose 'European rights' were harmed by their governments. Third, the impact of prestige varies according to the link between a policy domain and the identity of a member state. In general, a Dutch government does not worry about its prestige in social affairs, but it will be sensitive to accusations of protectionism or

distorting competition — whereas for France, it is precisely the other way around. Fourth, a careful assessment of relative economic and ideological costs, societal pressure, supranational pressure, and sources of prestige is crucial for applying this approach to other cases. If these preconditions are met, this approach may enable us to explain implementation and non-implementation of European policies, be it environmental protection in Poland, mutual recognition of higher education qualifications in Greece, or fishing policies in the United Kingdom.

Notes

1 I am grateful to Bertjan Verbeek and three anonymous reviewers for feedback on earlier drafts of this paper, and to Michelle Mellion for help with the editing.

2 'EU gender equality policies' here cover Treaty articles and binding legal instruments concerning the promotion of equality between women and men and non-discrimination in the labour market.

3 'Germany' means the former Federal Republic (FRG, West Germany), as far as the period until 1990 is concerned; it covers the whole Federal Republic for the period after 1990.

4 In 2002, 46.4% of the cases were closed before sending the 'letter of formal notice'; 31.32% were closed before sending the 'reasoned opinion', and 8.24% before referring the case to the Court, leaving only 14% to be decided in Court (Commission, 2003).

5 Between 1953 and 2002, in only four cases based on Article 227 EC (ex 170) a member state took another member state to the Court. In the same period, the Commission brought 2,300 cases against the member states before the Court (Commission, 2003).

6 See Case 26/62, *Van Gend and Loos*; Case 43/75, *Defrenne-II*.

7 In *Van Gend en Loos* (Case 26/62), Belgium and the Netherlands lodged a protest with the Court and argued that the issue of direct effect was a case for the Dutch court. The Court responded that this was indeed a case for the national *court* but not for the national *government* (ECR, 1963, I).

8 Article 119 (EEC Treaty):
Each Member State shall during the first stage ensure and subsequently maintain the application of the principle that men and women should receive equal pay for equal work.
For the purpose of this Article, 'pay' means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives, directly or indirectly, in respect of his employment from his employer. Equal pay without discrimination based on sex means: (a) that pay for the same work at piece rates shall be calculated on the basis of the same unit of measurement; (b) that pay for work at time rates shall be the same for the same job.

9 In 1971, of the female voters 42.2% voted for the CDA and 21.6% for the PvdA; 1 year later, 32.9% voted for the CDA and 27.3% for the PvdA (Leyenaar, 1989, 22).

10 In March 1973, at the *Optilon* zipper factory, women conducted an unsuccessful strike for equal pay. The strike was given a great deal of publicity and support by *Dolle Mina* and women in the trade unions, but the union decided to stop the strike for tactical reasons and accepted a collective agreement without a provision for equal pay.

11 Directive 75/117 on the approximation of the laws of the member states relating to the application of the principle of equal pay for men and women; Directive 76/207 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions; Directive 79/7 on the

progressive implementation of the principle of equal treatment for men and women in matters of social security.

12 Article 3(2) of the German Constitution provides that men and women have equal rights and Article 3(3) lays down a prohibition of discrimination on various grounds including grounds of sex.

13 *Teuling* (Case 30/85), *the Netherlands v. FNV* (Case 71/85), and *Dik et al.* (Case 80/87).

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