FINAL REPORT

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Title: Predicting the Impact of Policy: gender auditing as a means of assessing the probable impact of policy initiatives on women.

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ABSTRACT

The PIP project – *Predicting the Impact of Policy: gender-auditing as a means of assessing the probable impact of policy initiatives on women* – was an international collaborative venture involving participants in Ireland (University College Cork), Portugal (Universidade Fernando Pessoa, Oporto), Spain (Universidad Complutense de Madrid), Sweden (University of Lund) and the United Kingdom (University of Liverpool).

The long-term aim of the PIP project was to develop a model for assessing gender impact that could form an integral part of the law and policy-making processes of a state. In its initial stages the PIP project assembled data on the strategies employed in the partner states to ensure that women's interests are addressed within the law and policy-making processes. Country reports were prepared detailing such measures and assessing their respective strengths and weaknesses by drawing on academic and feminist critiques.

Two case studies were also carried out by the partner institutions in order to evaluate how well the range of strategies identified in the country reports worked in practice. The subjects chosen for the case studies were the initiatives taken by the Community regarding sexual harassment, namely the Commission's Recommendation and Code of Practice on protecting the dignity of women and men at work, and equal treatment in relation to pensionable age, as considered in Barber v Guardian Royal Exchange Assurance Group [i]. By selecting a situation where the partner states faced an identical problem but were free to act on it within their particular domestic context, the intention was to determine how well or how badly their equality strategies worked and the reasons for this.

The evidence which emerged was then used in order to pinpoint features which in a national context produced an effective means of addressing women's concerns, as well as aspects of the law and policy-making processes of the partner states which influenced the ability and commitment of policy-makers to accommodate gender-based concerns.

Finally the PIP project developed a model listing the qualities a procedure to assess gender impact must possess and the issues which must be addressed if it is to be integrated fully into a state's law and policy-making processes. It appeared that for this strategy to work it had to be adapted to a state's legal, political and institutional landscape. There was no simple procedure that states could adopt or the European Commission could impose on Member States that would instantly guarantee success. There was, however, a need for a body such as the Commission to act as a facilitator and educator in order to encourage Member States to exploit this particular equality strategy to the full.

SECTION ONE

Executive summary

Project Synopsis

The PIP project was an international collaborative venture involving participants in Ireland (University College Cork), Portugal (Universidade Fernando Pessoa, Oporto), Spain (Universidad Complutense de Madrid), Sweden (University of Lund) and the United Kingdom (University of Liverpool). The Feminist Legal Research Unit, Faculty of Law, University of Liverpool, was the co-ordinating partner and the project was funded by European Commission Targeted Socio-Economic Research (TSER) funds. The start date for the project was 1 December 1997 and it lasted 21 months.

The PIP project addressed the continued significance of gender as a factor in social exclusion in the European Union, despite measures to address gender-based discrimination. The aim of the project was to develop a model for assessing gender impact that could form an integral part of the law and policy-making processes of the European Union and its Member States. This would allow women to move closer to achieving substantive as opposed to formal equality.

The project did not aim simply to define and compare formal laws and policies directed at gender-based discrimination and equal opportunities within Member States. Rather, through the adoption of a socio-legal analysis of the law and policy-making process, it considered how the law and policy-making process itself could be directed towards achieving greater substantive equality for women.

In particular it examined the premise that a process designed to predict gender impact would allow the likely success of policies designed to eliminate social exclusion arising from gender to be assessed. So called “gender-neutral” policies should be the subject of a gender impact assessment since many such policies may work to women’s disadvantage and undo some or all of the good which social integration policies based on gender may have done.

At a time when the European Union and individual Member States have committed themselves to a policy of “mainstreaming”, it will be of considerable benefit to European and national policy-makers if all policies and legislative proposals could be assessed for their gender impact before they were implemented. In this fashion equal opportunities could be integrated into the process of planning, implementing, monitoring and evaluating all policies, measures and activities at Community, national, regional and local level.

Objectives

The first objective was to establish a database of gender-auditing practices that are currently employed in a cross-section of Member States to ensure that women's interests and concerns are addressed within the law and policy-making processes.

Country reports were prepared by each of the project partners identifying such mechanisms within their own domestic state context. The country reports described and evaluated the following issues.

- The institutional, legal and political landscape, including the law and policy-making processes, in the participating states.
- Feminism in the participating states.
- Equal opportunities legislation in the participating states.
- The manner in which women's interests/needs were addressed in the law and policy-making process.
- Governmental "culture" in the sense of government openness, the availability of information (including disaggregated statistical information), accountability, the importance of human rights.
- Conclusions on the effectiveness of the system.

What emerged from the country reports on these issues was important as the results provided guidance on the characteristics that an effective gender impact assessment process should possess. What follows, therefore, is a brief resume of the major findings in the country reports, highlighting those aspects which influenced the final shape of the gender impact assessment model and the characteristics/features it possessed.

- The country reports revealed the diversity of the institutional, legal and political landscape in the participating states. Whilst this was to be expected, it produced consequences which the model had to address if it was to be capable of functioning effectively. A good illustration of this difficulty is provided by the equality measures of the European Union (EU). As all the states participating in the project are EU members, there was a certain superficial uniformity about their existing measures for promoting equality. In practice, however, there was considerable divergence between participating states on how these strategies worked in practice. In the United Kingdom and Ireland there was a great deal of emphasis on litigation and using the anti-discrimination legislation, including Community law, to make gains – for example in the context of sexual harassment. In Portugal and Sweden litigation was not regarded as the norm. In Sweden there was emphasis on the social partners – unions, employers and government – and collective bargaining as an effective way of securing equality goals. The scope for individual litigation was much more limited. In Spain the most

important instrument in combating discrimination appeared to be the constitution rather than Community measures. Any model has, therefore, to be capable of being tailored to the political and legal landscape of a state. Otherwise there is the risk that the model exists "for show" and has no practical impact.

- Feminist discourses and feminist movements/strategies were differently situated in the current political landscape in different states. While it was useful in some states to pursue overtly feminist agenda, in others this would result in work being sidelined or ignored. A model would operate more successfully in some situations if it was tied to the process of accountability to democratic values or to a rights culture, than if presented explicitly as a feminist project. This would fit in with the quest by states for improved forms of government as well as the EU's efforts to address issues of transparency, accountability and governance at a supranational level.

- The feminist movement has been the instigator of a great deal of literature/research on how legal and political systems are the source of "hidden" discrimination since they favour male values and has produced a significant body of qualitative evidence about women's lives and the gendered social systems of EU Member States. This should be acknowledged when introducing a gender impact assessment model into a state's legal and political system. Those bodies with a knowledge of gender issues and the manner in which gender is socially constructed should be involved in any such procedure. Their "state-of-the-art" knowledge and research should be incorporated into any such procedure and this fact monitored.

- The strategies identified in the individual country reports for taking account of women's needs/interests in the law and policy-making process fell into the following categories:

1. Rights based strategies guaranteeing equality/equal treatment in the constitution: Laws which infringe such guarantees may be susceptible to challenge in the courts. This strategy was useful in the sense that it allowed all laws to be challenged if they contravened this guarantee. The negative aspects of this strategy were that it allowed only laws, not policies, to be challenged; who might mount such a challenge was often restricted; rights in a constitution could conflict with one another; this was a challenge that occurred after the content of a law had been settled; and if it was successful it meant that the provision in question was void. It did not place a duty on a law-maker to introduce a more woman-friendly version of that provision.

2. Anti-discrimination legislation, including Community measures on sex discrimination: In some countries, such as the United Kingdom and Ireland,

litigation played an important part in the enforcement of such legislation and could be used to challenge laws and policies which were discriminatory. The reversal of the burden of proof was an important issue in this context. This strategy was useful in that it served an educative purpose allowing society as a whole as well as certain specific groups, such as employers, to see what behaviour was acceptable. Litigation as an enforcement tool also has many negative aspects. In reality only a limited proportion of potential litigants could take such a course of action: lack of access to justice and continual dependence on the discriminatory party are major hurdles. Moreover the impact of litigation has often depended on how certain terms such as direct and indirect discrimination were defined. Judges could not always be relied on to develop the legislation in ways that were favourable to women. The concepts used in legislation were themselves unhelpful at times: for instance, the concept of indirect discrimination though useful to a degree could not adequately address structural discrimination in employment. Moreover, the scope of anti-discrimination legislation varied, for example the ban on discrimination might apply only to certain areas such as employment. Another disadvantage was that this strategy could only be used to address discrimination after the event. In other countries a more proactive approach was preferred whereby public law was used to encourage or enforce compliance with anti-discrimination legislation, e.g. the Swedish Ombudsman has the authority to carry out checks on equality plans in counties. This power acts as a catalyst to ensure compliance with the Swedish equality legislation on the basis of threatened action and threatened penalty. In some instances, both litigation and proactive enforcement strategies were used in combination. Finally the impact of EU equality measures seemed to vary considerably among the participating states. In some countries it appeared that full advantage was not being taken of Community rights.

3. Positive action/positive discrimination programmes: Programmes such as these could for example be used to secure better representation for women in the law and policy-making process. All participating states used the concept of positive action/positive discrimination and the notion would seem to have a lot to offer in tackling occupational segregation and the exclusion of women from the decision-making process. The negative aspects of this strategy were its restricted definition in some participating states; the fact that in some jurisdictions positive discrimination was unlawful; the confused state of Community law; and the fact that in some cases the impetus for positive action/discrimination had to come from the employer not the state.

4. Equality agencies: Such agencies made, on the whole, a very positive contribution to promoting equal opportunities. They disseminated good practice, supported litigation, financed research and fed views into the law

and policy-making process. Unfortunately this positive impact was reduced because of a shortage of funds/personnel; their views were ignored, bypassing them completely; their low public profile; competing bodies (as illustrated in Portugal) and poor networking with other gender agencies**.** Their degree of independence is important, particularly when faced with a government which is not sympathetic to furthering equality issues.

5. Ministers for Women/Ministers for Equality: Minister/Ministries can directly influence policy-making and promote laws that are helpful to women as well as comment on the gender impact of laws in general. The negative aspects of this strategy were the standing of such Ministers; their commitment; the feeling that they and they alone were responsible for gender/equality, sparing other Ministries the need to consider these issues.

6. Mainstreaming/equality proofing: This strategy calls for the auditing of laws and policies whilst they are in the process of preparation in order to determine whether they will have an adverse impact on women. This has led to a proliferation of new procedures and techniques, many of which are still under development or are in use only in a limited context. Early indications are that mainstreaming can offer many advantages over more familiar procedures - it deals with all laws and policies, it is utilised whilst those laws and policies are in the course of preparation and it makes gender everyone's concern. However, its processes are not yet sufficiently well developed and have not been in place long enough to draw firm conclusions about their advantages. Some early examples serve to demonstrate the pitfalls which such initiatives must avoid if they are to be successful. For instance, in some situations there was a statement of intent and no evidence to illustrate how/whether this statement was acted upon. In other cases mainstreaming seemed little more than a mechanistic exercise, with no data to back up findings, a lack of consistency in analytical techniques, no evidence that those bodies with specialised knowledge were consulted, and no monitoring process.

The project's second objective was to evaluate how well the range of "gender impact assessment mechanisms" identified in the country reports worked in practice. Case studies were undertaken to give an additional dimension to the analysis. The case studies took a situation where the partner states faced an identical problem but were free to act on it within their own domestic law and policy-making contexts. Their reactions helped to allow conclusions to be drawn on how well or how badly their gender impact assessment mechanisms worked and why this is so. The subjects chosen for the case studies are the initiatives taken by the Community regarding sexual harassment, namely the Commission's Recommendation and Code of Practice on protecting the dignity of women and men at work, and equal treatment in relation to pensionable age, as considered in Barber v Guardian Royal Exchange

Assurance Group [ii]***.***

The case studies provided some interesting data on how well or how badly those gender agencies and gender impact mechanisms identified in the country reports worked. The results of the case studies confirm the criticisms that were made regarding these mechanisms/agencies in the country reports. Specifically, the case studies highlighted the following:

1. That when faced by a common dilemma, such as sexual harassment, states are very much influenced by their individual legal and political systems as well as traditions. States utilise existing concepts and methods to deal with a particular equality issue. For example, once sexual harassment was identified as an issue in the United Kingdom one of the strategies used to deal with it was litigation and the claim that such behaviour amounted to sex discrimination. Other participating states, such as Sweden, made little or no use of a litigation strategy. Instead pressure was brought to bear for the passage of legislation to deal with sexual harassment.

2. That a state's capacity/willingness to address equality issues and the equality measures it adopted were influenced by available finances.

3. That unless clear lines of accountability for implementing equality measures exist, states can get away with doing very little in response to EU pressure to make legal and political adjustments. In this connection it should be recognised that Member States themselves are not the best judges of their own performance – there is a need for the EC Commission to make itself accessible and open to a range of interests if it is to be well-informed about the situation within Member States. Furthermore, targets and monitoring processes are required to enhance accountability to provide some counterbalance to financial pressures which will often otherwise override any responsibility to take into consideration the results of any gender impact assessment.

4. That unless a significant degree of gender awareness exists within policy-making structures and among those who make policy, few issues will be deemed to require gender analysis. So long as a state sees a particular issue or problem as already being addressed by specific legislation, for example equality in pension provision, then a comprehensive gender analysis of that issue will not be seen as necessary. Legal measures to deal with direct discrimination should not preclude the need for gender impact assessment in general which may well expose forms of hidden discrimination that remain in society.

The project's third objective was to identify, from the evidence of the country reports and the case studies, features which in a national context produce an

effective means of addressing women's concerns, as well as aspects of the policy and law-making processes of the partner states which have strongly influenced the ability and commitment of policy-makers to accommodate gender-based concerns.

What the country reports and case studies demonstrate is that some gains in promoting equality have undoubtedly been made. Those gains are not consistent within the participating states and the trigger for such gains varies. In some cases it may be Community law but in others it may be as a consequence of internal pressures. The traditional strategies for promoting equal opportunities have produced limited results and this may be why, in many participating states, new strategies have been adopted, most particularly mainstreaming. It seems, therefore, if gender is to be integrated successfully into law and policy-making, full use must be made of the whole range of strategies for promoting equality starting with mainstreaming. If there is an effective procedure for mainstreaming then all laws and policies may be audited for their gender impact. The more traditional equality strategies can then be utilised more effectively. The anti-discrimination legislation can itself be mainstreamed for maximum impact and can then be used to tackle individual instances of discrimination which will still occur. Mainstreaming can also ensure that the views of equality agencies are taken into account and that constitutional guarantees of equality have a practical impact.

Many previous studies and commentators have identified weaknesses in existing strategies for furthering equality and many of these were supported in the country studies. If mainstreaming is to be pursued as a strategy for addressing inequality the lessons of the past must be learned. Common observations have identified the following failings:

- lack of resources: Equality agencies in particular lacked the resources to carry out their task of promoting equal opportunities.

- lack of consultation: Most partner states had some mechanism in place to evaluate laws and/or policies for their gender impact but these did not appear to work well because of a lack of consultation. One reason for this may be the apparent lack of involvement of individuals/agencies with relevant knowledge. Another reason may be that although there was a centralised system of policy-making that included a consultation phase, it was not "real" because it was not as complete as it could have been.

- lack of information: There was a lack of data on women since statistical information was not always disaggregated according to sex making it hard to predict what effect a particular action would have on women.

- confidentiality: It was hard to determine what impact a particular strategy

such as mainstreaming was having since many governments insisted on confidentiality in relation to policy-making.

- politics: The influence a Minister for Women might have on, or the input an equality agency might make into, the law-making process, was often a political matter. A government opposed to promoting equality could simply sideline equality agencies or terminate the office of Minister for Women.

- judicial interpretation: This was significant in those countries where there was a great deal of emphasis on litigation but also in those countries with a constitutional guarantee of equality. Unhelpful interpretations of the anti-discrimination legislation or of an article in the constitution can be extremely counter-productive.

- competition: In some countries there were several agencies dealing with the promotion of equal opportunities between men and women so there was a problem of resources and the allocation of responsibility. In addition there are other groups seeking equal treatment, for example for the disabled or ethnic minorities, who may be in competition for resources and may well be seeking to take advantage of the same strategies, e.g. mainstreaming. This has led to speculation that it could create an equality hierarchy where, for example, racial equality is seen as more important than gender equality, and bodies compete amongst each other to retain a given sphere of competence or to maximise their potential authority at the expense of other groups.

It is thus necessary to address the context in which mainstreaming will flourish as well as the practical requirements of any such process.

Successful Mainstreaming: The Context

- Political Commitment: Without political commitment at the highest level then processes such as mainstreaming become either a mechanistic exercise with no real purpose to them or an empty declaration of intent.

- Resources: If gender is to be successfully integrated into law and policy-making then resources in terms of money and personnel have to be devoted to the process. Money has to be devoted to collecting relevant data, personnel have to be trained to be aware of the possible gender implications of their actions rather than this being an intuitive process. Agencies with gender expertise have an important role to play in ensuring that gender is successfully integrated and hence need adequate resources to perform this task.

- Gender Awareness: It is necessary to continuously develop awareness of the reasons why traditional equality measures have not worked well. In

particular gender is concerned with the way in which the roles of the sexes are construed in society. This social construction can then lead to occupational segregation, the burden of childcare falling on women and violence against women. Mainstreaming can only be successful where due consideration has been given at all levels to this subtext that runs through society. At the political level, it may be necessary to foster better awareness of gender issues to enable and assist political actors, such as parliamentarians and NGOs to play a full role in ensuring that gender issues have been addressed. On a practical level, data must be available, particularly disaggregated statistics, that highlight the manner in which sexual stereotypes are manifested in society. If the kind of data that is needed for gender impact assessment is lacking, relevant data and information may be available, for example in the form of case studies, from local NGOs working on gender equality issues. This is a way also of getting data/information on women in disadvantaged groups that might not be available in official statistics.

- Openness of Procedure and Participation: There need to be clear directions on how exactly gender is to be integrated, including some procedure for gender impact assessment, and sufficient transparency to demonstrate that such guidance is being effectively acted upon. Integrating gender successfully requires the participation of groups and individuals who have first hand experience of the phenomenon, to ensure that the process is more than a paper exercise. So channels have to be developed to make sure this happens rather than leaving it to the good offices of those personally responsible for integrating gender.

Successful Mainstreaming: The Content

If mainstreaming is to function successfully then a number of specific issues have to be addressed:

- Responsibility and Accountability: the gender impact assessment procedure must be suited to the context in which it is to operate. This includes the political and legal culture in which it is to operate, the resources and expertise available, the goals to be pursued and the level at which gender impact assessment is to be carried out. But more specifically, it must be explicitly stated who is to be responsible for the adoption or adaptation of a model for a particular area of operation and who is to be accountable for its implementation, within an individual state system. A chain of accountability needs to be firmly established and the role of government, parliaments or other quasi-governmental bodies made clear. Detailed guidelines need to be issued that specifically cover the issues of responsibility.

- Scope: gender impact assessment procedures must specify clearly to whom

they apply, who is to carry out such assessments and on which laws and policies, and who is accountable for the process. The very purpose of mainstreaming would be undermined if substantial areas of policy-making were exempted from the scope of such obligations for instance, by the use of inappropriate screening criteria. It is particularly important to assess financial policies and the allocation of budgets. It will be necessary to establish a process of review of existing laws and policies. It will be necessary to adapt gender impact assessment procedures to the specific circumstances and level of law and policy being analysed (local, regional or national). In the modern state where many governmental functions have been devolved to non-governmental bodies it will be particularly important to draw the scope widely and to clearly establish the obligations of such bodies and the chain of accountability. Similarly, the private sector should be obliged to conduct gender impact assessment on policies where appropriate, for example in relation to all aspects of employment practice, remuneration and service delivery.

- Detailed Guidance on the Gender Impact Assessment Procedure should be issued to administrative officials. This should address the following points:

1. what the objectives of gender impact assessment are in the context of their area of policy;

2. how gender is to be incorporated into the decision-making process. i.e. at what stages of the policy-making process gender will be addressed and how it will relate to other demands such as race, age and religion, for example;

3. how gender impact assessment is to be resourced;

4. how training needs are to be met;

5. how participation and openness of the process are to be guaranteed;

6. what procedures for internal monitoring and accountability are to be established. This should include the identification of relevant indicators and the establishment of targets where possible.

- Securing Compliance: A mechanism for monitoring mainstreaming and the procedure for gender impact assessment must be established. Exactly how this is done may, once again, depend on the political and legal landscape within participating states, but consideration should be given to the following:

1. as an integral part of the policy-making process, standards, goals and review commitments should be established which could be used to monitor the gender impact of policy and to facilitate future review. It is important that

high expectations are established and maintained and that compliance is secured. In some policy areas a statutory obligation to undertake gender impact assessment may be appropriate. Sanctions should be employed as appropriate.

2. the process of mainstreaming should be monitored by an external agency. This will enable expertise to be brought to bear, the views of agencies including equality agencies to be sought, information and good practice to be developed and shared, and an overview of performance to maintained.

3. there needs to be an “audit” of decision-making bodies/procedures to determine who is involved, who is consulted and whether there is an appropriate gender balance.

SECTION TWO

Background and Objectives

Social integration policies devised by the European Union and its Member States aim to counterbalance those forces which are at work within European society and are the cause of social exclusion. Such forces include unemployment, poverty, gender, a lack of education and training and certain household structures, for example single parent households. It is the goal of social integration policies to put an end to the fragmentation which follows on from social exclusion. Yet two major factors may result in social integration policies being rendered less effective. First there are the mainstream economic and monetary policies of the Community and its Member States. The aim of these policies is to achieve increasing rates of economic growth and higher levels of employment. At a Community level policies aimed at securing ever closer ties between Member States, such as those associated with the Single European Market and economic and monetary union, have had and will continue to have a considerable impact at the level of individual Member States. Taken as a whole these national and Community economic pressures have resulted in calls for more flexible working patterns, for the removal of regulatory systems that are seen to stifle entrepeneurship, for a more innovative approach to work and the workplace and for strict economic disciplines as Member States struggled to meet the convergence criteria associated with monetary union. These economic and monetary policies are, however, implemented with little or no attention being paid to how they will affect vulnerable groups within society that are the target of social integration policies. Secondly there are the social integration policies themselves, which, for a variety of reasons ranging from poor drafting to a lack of understanding of the concerns that affect the target group, may not, both in terms of their content and their application, be totally effective in correcting social exclusion.

The PIP project had as its objective the construction of a process to predict the impact of policies on vulnerable groups within society. It took as its starting point those policies devised by the Community and by individual Member States to improve women's participation in society and in the economy. These policies range from the deployment of anti-discrimination legislation, to positive action measures such as encouraging women into an employment sector where previously they were under-represented, to strategies designed to allow women to more easily combine work with their family responsibilities. Countless studies had demonstrated that either such policies did not appear to work or that they improved the situation of only a small proportion of women. In the United Kingdom, for example, anti-discrimination legislation had been in place for over twenty-five years but women still earned considerably less than men and were still to be found working in discrete areas of the economy. The same picture was repeated at Community level with a variety of initiatives such

as directives, Community Action programmes and recommendations to increase women's participation in decision-making. Yet despite these positive measures they appeared to have had little impact on the actual situation of women. Women continued to be disproportionately represented among the low-paid and the unemployed whilst they were under-represented in the policy and law-making processes at national and Community level.

Research had concentrated on why social integration initiatives aimed at women had failed to achieve their goal. A variety of factors had been isolated in order to explain why this was so.

> The reasons for the continuing disparity between the economic situation of men and women, despite the introduction of legal provisions designed to secure positive gains for women, are undoubtedly complex and deeply-rooted in the structures and institutions of society and culture. Women's work patterns, their role in childcare and elder care and the segregated nature of the labour market are implicated.
> (Beveridge and Nott, 1996: 387)

It was, however, not only the law's content that failed to address women's continuing social exclusion but the actual processes of law-making, policy-making and judicial decision-making. These too ignored women's concerns. An examination of law-making within the Community illustrated this point.

> Despite a commitment to openness, the law-making/decision-taking process within the Community revolves round a system of negotiation, compromise and lobbying which is far from transparent and which can be assumed to operate in the interests of powerful organised interest groups rather than being "woman-friendly".
> (Beveridge and Nott, 1996: 388)

Decisions of the European Court of Justice had been criticised for their failure to interpret Community law in a manner that was helpful to women. These same criticisms were repeated at a national level where the whole ethos of law-making and the very structure of the state was condemned for being male in its outlook. When women's needs were addressed, this was done from a male perspective of what women want since it was men who dominated law and policy-making.

The PIP project acknowledged that criticisms could be made of the policies designed to encourage women's participation in society and that a need existed to find ways of addressing the concerns that had been expressed over the process of policy and law-making. Tackling these issues alone was not sufficient to combat the social exclusion experienced by women. To do this, all policies and legislative proposals needed to be assessed for their gender impact and possible adverse consequences for women **before** they were put into

practice. In this fashion it would be possible to identify adverse effects **before** policies were acted upon. It was felt that this needed to be done systematically by looking at the entire range of policies and not simply those which were concerned with rectifying social exclusion based on gender. The prime objective of the PIP project was, therefore, the construction of a model procedure which could be used to assess all policies and legislative proposals for their gender impact and the means to integrate it into the law and policy-making processes of individual states.

SECTION THREE

Scientific description of the project results and methodology

The PIP project had four specific objectives:

- to prepare country reports detailing the ways in which women's concerns and gender inequality were addressed in those states participating in the PIP project;

- to conduct two case studies in order better to evaluate the effectiveness of those gender specific procedures identified in the country reports;

- to identify from this evidence features which in a national context produce an effective procedure for assessing the gender impact of a proposed law or policy;

- to produce a model gender impact assessment procedure and identify the issues which have to be addressed if that model is to be successfully integrated into a state's institutional, legal and political landscape.

A. OBJECTIVE ONE

The first objective was to undertake an analysis of those methods that are currently employed in the partner states to ensure that women's interests and concerns are addressed within the law and policy-making processes. More specifically this analysis aimed:

- to document the main ways in which law and policy is made in the partner states and the manner in which women's concerns are taken into account within those processes;

- to highlight the diversity (and similarity) of those methods used by partner states to deal with women's concerns;

- to provide a background against which differences in the implementation/handling of the two European measures considered in the case studies could be read and understood.

In order to achieve this objective each of the partners involved in the PIP project prepared a country report. The country reports were designed not only to give details of the manner in which women's interests were taken account of in law and policy-making but to position that information within the legal and political landscape of the state in question. Copies of the country reports are to

be found in Annex Two. These reports have subsequently been published as part of the Feminist Legal Research Unit's Working Papers series.

COUNTRY REPORTS

Partner Responsible	ALL
Other Partners Involved	
Duration	5
Objectives	The preparation and circulation of country reports by the partners. These will identify those mechanisms/strategies used within partner states to ensure that women's concerns are addressed within the law and policy-making process.
Methodology	This is, in part, a fact-finding exercise when partners, who are familiar with their own law and policy-making systems, will systematically document bodies and individuals with responsibility for women's affairs and the existence of any gender impact assessment mechanisms. The partners will then record any constraints on the efficient working of such bodies or procedures such as a lack of adequate data or limitations arising from the way in which the political process is ordered within their jurisdiction. In compiling this critical overview, the partners will, at this stage, draw on existing literature and research on the efficacy of the bodies or processes under consideration. This data, in the form of country reports, will be circulated among the partners for their information and comment.
Deliverables	Country reports.

Contents

The country reports constitute a database of information and commentary on the following items.

1. An introduction to politics, constitution and law in the relevant state including its institutional landscape, its law and policy landscape and its law and policy-making processes.

This section of the country report described the major features of the law and policy-making landscape of the state in question, dealing with both institutions

and processes. It was designed to allow those who were not familiar with the state in question and its institutional framework to appreciate the layers of government, for example parliamentary processes or government committees, a policy initiative had to negotiate before it could be acted upon. The system of law-making in the relevant state was outlined, as were other laws or policies with which an initiative must comply if it was to succeed, such as constitutional requirements or human rights obligations. In particular the various "routes" a policy or law-making initiative might follow were identified, as were the differences in inputs and outputs associated with these "routes". An attempt was made to assess how open or closed to public scrutiny these routes were and who might have access to them in the sense that they might be consulted or have the opportunity to lobby for changes to the measure in question. Those preparing the reports were asked to include information on whether the route an initiative followed might shape its final form and whether "informal inputs" were made to the law and policy-making process as well as those formal inputs which the law and policy-making process required. Finally this section of the country reports attempted to define the "legal culture" within which these processes and institutions operated. For example was there a strong "rights" culture within the state in question or was emphasis placed on traditional values and roles particularly in respect of men and women?

2. An account of the state of feminism in the country in question and its equality laws.

It was felt to be appropriate to include a section discussing "the state of feminism" in the country report. This was in order to provide information on the interplay between feminist activism and ideas and the state, the profile of the feminist movement (whether it was active at a national or local level or campaigned on specific issues) and the presence or absence of "state feminism". This latter term "refers to activities of government structures that are formally charged with furthering women's status and rights" (Stetson and Mazur, 1995). It was believed that, by including this information, a more detailed assessment could be made elsewhere in the report of matters such as the openness of the law and policy-making processes to feminist activism and ideas as well as the links between feminism and "women's policy machinery."

Accompanying this account of feminism was an analysis of the major gender equality laws of the state in question, the mechanisms for their enforcement or implementation and an assessment of their overall effectiveness. In addition, attention was paid to the concept of equality embraced or promoted by these laws as well as the inequalities they did not address. Finally an assessment was made of the extent to which the state in question had improved the provision under its law to take account of developments in EC law or alternatively any failure to do so.

3. An account of the law and policy-making framework's treatment of women's

issues.

This section of the country report isolated those aspects of the law and policy-making framework which were of particular relevance to women. This included constitutional provisions guaranteeing equality or prohibiting discrimination on the grounds of sex, government bodies or departments with responsibility for women's affairs, procedures or bodies for voicing women's concerns in the course of the law-making process and the presence of any systematic procedure for scrutinising proposed measures for their gender impact or more generally for their social impact. More generally those preparing the country report were asked to comment on the exact contribution these bodies and processes made, for example whether they contributed to policy-making across the board or were able to comment only on those matters specifically referred to them. Attention was also drawn in the report to any factors, such as constitutional constraints, which hindered the development of gender-specific policies, procedures and/or laws.

4. Information and information constraints.

The country report contained a commentary on the openness of government and the presence or absence of legislation/policies dealing with freedom of information. This issue was important for two reasons. In the first place any obligations imposed on a government to disclose information relating to the law and policy-making processes would permit much more accurate assessments to be made on the degree to which women either contributed to or had their interests taken into account when policy and legal initiatives were under discussion. Secondly in order to make accurate predictions on the impact that a particular policy or law would have on women or on gender equality in general, statistical information was thought to be essential. Otherwise decisions might be taken on the basis of anecdotal evidence or stereotypical perceptions of the respective roles of women and men in society.

Those preparing the country report were asked particularly to comment on

- whether or not national statistics were disaggregated according to sex;

- whether those involved in law and policy-making were able to commission studies prior to embarking on a policy or legal initiative and, if they could, whether they chose to do so;

- the publication/dissemination/availability of information about the processes/key stages of policy-making;

- the publication/dissemination of views received in the consultation stages of law or policy-making;

- information about the impact of measures after their implementation.

5. A summary of views and opinions on the effectiveness of the system.

The final section of the country report offered a feminist critique of the law and policy-making processes in the relevant state. Elsewhere in the report there had already been specific criticisms of specific aspects of the system. This section offered those preparing the report a chance to highlight what they regarded as particularly significant features of law and policy-making in the sense that they worked either to women's advantage or disadvantage. In doing this there was an awareness that such features might not be consistent in their impact. For example, the concerns of particular groups of women (such as working women) might be specifically targeted whilst other groups (such as elderly women) hardly figured on the political agenda. In addition some women (such as single mothers) might suffer as a result of the attention they attracted from policy-makers. In addition those preparing the country report were asked to be alive to multiple discrimination, that is the double discrimination that some women suffer as a result of their ethnic origins or disability. Could the law and policy-making processes take account of the needs of such women or were the mechanisms designed to take account of gender one-dimensional?

Methodology adopted in relation to the country reports

A socio-legal methodology was adopted for all parts of the country reports. This did not preclude the inclusion of other methodologies/forms of analysis (doctrinal, historical) but it was expected that if different methodologies were used, they would be deployed within this broader socio-legal context. This socio-legal enquiry proceeded from a feminist perspective i.e. at all times the situation of women was considered as a central focus of enquiry.

The principal task of the country reports was to offer an overview of the ways in which women's concerns are addressed within specific states. This provided data on such matters as the differences and similarities between state practice, the impact of EU law as well as a landscape against which the case-studies could be conducted and understood.

Those responsible for preparing the country reports did not underestimate the difficulties inherent in comparing the political processes of different states. It was felt important to impose some degree of uniformity on the shape of the country reports in order to obtain broadly comparable data. Equally important, however, was the need to allow the authors of the country reports to give their national view and "tell it as it was." It was felt that the methodology adopted struck the correct balance between comparability of data and national views. Differences in legal and political traditions often become apparent from where

data is included within the framework adopted for the country reports and the amount of data that is available on a particular matter. For example in some partner states, such as Ireland, considerable emphasis is placed on the role of litigation in promoting gender equality. In other partner states, such as Sweden, litigation has a very limited role to play in eradicating inequality.

The country reports contained both descriptive and critical elements and reflected the interdisciplinary nature of the PIP project. Both primary and secondary sources were referred to in the country reports. Any references to "primary" sources were accompanied, where relevant, by any substantial critique of those sources which was available. For example, a "final" court may regard itself as having the final say on matters brought before it, but its overall importance in the system may be demonstrated by writers to be very little. The secondary sources that were used were both "official" and academic - where an "official" view was presented this was made clear.

Wherever possible, those preparing the country reports commented on the effectiveness (from a feminist perspective) of various aspects of the processes described, either by citing academic opinion/reports or by commenting themselves (or both).

Very few problems emerged in relation to the methodology used for the country reports. There was a lack, on some occasions, of academic literature/commentary on the institutions, policies and processes that were the focus of the country reports. The methodology for the country reports contemplated that partners would be able to draw on existing academic literature, but this was not always possible. There were a variety of explanations for this. In some cases the institutions/processes under discussion were very new and had, therefore, not been the subject of analysis. For example, in the United Kingdom a new government took office in May 1997 a few months before the project got underway. Almost immediately it established the post of Minister for Women, set up a Women's Unit and committed itself to a policy of mainstreaming. Nothing had, therefore, been written analysing these new developments or even describing their operation and their purpose. This made it necessary on occasion to rely solely on approaches to government officials or members of government or non-governmental organisations in order to obtain basic information. This proved to be a lengthy process since interviews had to be arranged and the time for asking questions to a busy politician/official was often limited. On the whole, however, officials and politicians were helpful. Alternatively, some well-established institutions/ processes appeared to be so little known or their activities so little publicised that they had not been the subject of any detailed research. Some partner countries also possessed a better-developed literature on gender than others. In reality, however, this lack of commentary did not pose a particular problem since the country reports are very much a database of what institutions/ processes/policies exist. Our partners proved themselves to be more than

capable of providing their own initial analysis and the research undertaken in the form of the case studies yielded some more definite conclusions on how well these gender specific institutions and processes worked in practice.

The only other difficulty encountered was in relation to terminology rather than methodology. The full title of the PIP project is – Predicting the Impact of Policy: gender-auditing as a means of assessing the probable impact of policy initiatives on women. At the first partners' meeting some discussion took place regarding the meaning of the term "gender-auditing". As is apparent from the PIP project's objectives, gender-auditing referred to the desire to audit or assess policy proposals in order to predict the effect, good or bad, that they might have on women. At the partners' meeting held at the start of the project, it became apparent that the term "gender-auditing" was similar in many respects to other terms in more common usage such as "gender impact assessment" or "mainstreaming". As a consequence in many of the reports and articles produced in relation to the project these terms have been used as opposed to gender-auditing. Care was taken, however, to explore the terms "gender impact assessment" and "mainstreaming" since they too have no consistent meaning. It was recognised that it was not easy to define what was meant by these terms. However the methodology for the preparation of the country reports made clear that the expression "gender impact assessment mechanisms" was to be used in the following fashion:

"gender impact assessment mechanisms" cause law/policy-makers to predict the impact of their laws/policies (from a gender perspective).

It was also felt that the following comments would help to inform discussions and/or raise points which may be taken up in the country reports:

"gender" - whilst the PIP project is concerned with those procedures which have gender as their focus, this does not exclude comment on audit mechanisms which operate in other areas for the purpose of comparison or as examples of good practice;

"cause" - may cause in a scientific (predictive) sense or in a normative (require or encourage) sense - anything which brings about this result, for whatever reason;
- may be a conscious or deliberate attempt to address gender imbalance or part of a wider process that does so only incidentally.

"predict" - done in advance of securing the policy/law or as part of routine review of the workings of the policy/law where there is a possibility of change/adjustment. i.e. it involves anticipation of impacts.

"impact" - might range from "proofing" measures from legal challenge i.e. checking compliance with peremptory measures (laws, constitution,

international obligations, internal guidelines) ...to assessing in detail the sociological/economic impact of measures - would seem to necessitate the consideration of factors other than "mere" politics.

"assessment" - some attempt to weigh impacts objectively, and in terms other than "mere" political acceptability/convenience.

"mechanisms" - part of the system - a regular if not consistent part of the law/policy-making landscape i.e. more than ad hoc. However an ad hoc example might be useful as an example of "good practice".

As for the term "mainstreaming", this was treated as an altogether broader concept. Mainstreaming was regarded as a strategy to promote gender equality. In all probability, therefore, a successful mainstreaming strategy would include a gender impact assessment mechanism. It was felt, however, that it might well include other elements and that it was one of the goals of the PIP project to determine precisely what these other elements should be.

Finally the PIP project did acknowledge from the outset that in trying to determine the effect of policy proposals on women, account had to be taken of the way in which the social and cultural constructions of the appropriate roles for men and women (gender) influenced any probable impact.

Findings

The country reports contain a great deal of interesting and original material. In the first place they are a source of data on the range of equal opportunities strategies currently employed by those states involved in the PIP project. Secondly they provide evidence on how successful such equal opportunities strategies are. Thirdly the findings in the country reports offer considerable guidance on the characteristics that an effective gender impact assessment process should possess. Finally, the country reports also shed light on the issues which must be addressed if the strategy of mainstreaming is to be employed successfully by states.

Conclusions reached in relation to Equal Opportunities Policies in general

On the matter of equal opportunities policies in general the following common themes emerged from the five country reports.

- The individual country reports identified that use was being made of the following strategies for taking account of women's needs/interests in the law and policy-making process:

1. Rights based strategies and in particular constitutional guarantees of

equality/equal treatment.

With the exception of the United Kingdom, the states participating in the PIP project possessed written constitutions that guaranteed equality between the sexes. Such guarantees took a variety of forms. In Portugal, for example, the constitution has nine articles dealing with gender equality. Article 9 imposes a duty on the state to promote equality between men and women whilst Article 26 establishes the right to legal protection against discrimination. Article 59 of the Portuguese Constitution sets out the main rights of workers and these include the right to work in a manner that respects social dignity and permits the reconciliation of professional activity with family life. Furthermore Article 59 imposes a duty on the state to guarantee conditions of work, salary and rest including special protection at work for pregnant women.

Constitutional guarantees of equality can be helpful in promoting equality. They represent high level commitment on the part of the state and undoubtedly can and do have an educative value. At a more practical level a law that infringes such constitutional guarantees may be susceptible to challenge in the courts. In the Spanish country report the use by the Spanish Constitutional Court of its power of constitutional review to expand the concept of equality is highlighted.

> … Spanish law is… currently in the process of evolution. It is in transition from a restrictive conception of equality and no gender discrimination principles towards a more modern approach and one that is more in accordance with the statements that are currently being made by the European Court of Justice. In this evolution, a leading role is played by the Constitutional Court, whose work of interpretation of constitutional provisions (articles 14 and 9.2) has established the concept of indirect discrimination, mainly in the employment field, and has also put into effect the modification of the burden of proof.
> (Arranz, Quintanilla and Velázquez, 1999)

Using a rights based strategy to tackle inequality between the sexes is not without its problems. In some countries, such as the Netherlands, it is not possible to challenge a law on the grounds it infringes a constitutional guarantee, whether of equality or of any other right. In other countries there are restrictions on who can mount such challenges and in what circumstances. This is the case in Portugal where the Constitution permits only a named range of officials, such as the President of the Republic, to initiate a direct challenge to the constitutionality of a legal provision in the Constitutional Court. Ordinary citizens are restricted to questioning the constitutionality of a law in the course of ordinary legal proceedings (Casqueira Cardoso, 1999: 10-13).

Even if a constitutional challenge is possible there is a chance that it will not be dealt with sympathetically in the courts. It is also the case that the rights in a

constitution can and do conflict with one another and that the right to equal treatment might be "trumped" by another right. In Ireland the judiciary was criticised for its reluctance to rely on the constitutional guarantee of equality (article 40.1) which had left unanswered many questions regarding its potential scope (Donnelly, Mullally and Smith, 1999: 109). Where it had been relied on by the courts, the "transformative potential" of the equality guarantee had been severely restricted as a consequence of rulings that it was not a core norm and that it was inapplicable in the context of the labour market. Indeed since equality was not a core norm this meant that, "equality protection has frequently lost out against competing claims to individual freedoms" (Donnelly, Mullally and Smith, 1999: 109)

Furthermore constitutional challenges inevitably occur after the content of a law has been settled and, if successful, result in a declaration that the provision in question is void. A law-maker cannot be forced to introduce a more woman-friendly version of that failed legal provision. Finally rights based strategies often depend for their success on the infrastructure and machinery being put in place to make them work. As was apparent from experiences in the United Kingdom, guaranteeing women a right to return to work after the birth of a child meant little if the facilities were not available, such as nursery places, to turn that right into a reality.

2. Anti-discrimination legislation, including Community measures on sex discrimination.

All the countries participating in the PIP project had legislation in place that was designed to eliminate sex discrimination and promote equal opportunities. In some partner states the European Union's sex equality measures had had an undoubted influence on national law. For example, Community measures had played a prominent role in the United Kingdom fulfilling at times a constitutional function in the context of litigation. In Ireland, Portugal and Spain there had been a noticeable alignment of national law with EU law. This contrasted with the situation in Sweden where EU law was largely disregarded in favour of proactive measures to promote equality in the workplace.

As a consequence of the influence of EU law there was a superficial similarity between the anti-discrimination measures adopted by the partner states. However the country reports revealed that, in reality, national political, legal and institutional cultures meant that anti-discrimination measures varied enormously in their normative content. For example in Portugal the ban on discrimination applied only to employment. In the United Kingdom it covered not only employment but also education and the provision of goods and services. In both cases, however, this strategy could be used only after discrimination had occurred.

The manner in which the anti-discrimination legislation was implemented also

varied. In the United Kingdom and Ireland, litigation played an important part in the enforcement of anti-discrimination legislation. On the positive side this litigation culture has led to substantial gains particularly in the United Kingdom. Equality agencies and trade unions in the United Kingdom have made strategic use of EU equality measures and referrals to the European Court of Justice (ECJ) to challenge unduly restrictive national laws and remedies. It also seems that such cases, by attracting media attention, have had an important role in educating others – employers, legal advisors and those who have suffered unlawful discrimination.

Litigation as an enforcement tool has, however, many negative aspects. In reality only a limited proportion of potential litigants take such a course of action: lack of access to justice, the burden of proving discrimination and continued dependence on the discriminatory party represent major barriers. In addition the impact of litigation often depends on how certain terms, such as direct and indirect discrimination, are defined in the legislation. The concept of indirect discrimination as defined in the United Kingdom's Sex Discrimination Act 1975, for example, was useful to a degree but could not adequately address structural inequality. Nor can judges always be relied on to develop the legislation in ways that are of benefit to women.

In those partner states with a less dominant litigation culture, such as Sweden and Portugal, a more proactive approach to promoting equality was preferred. Institutions and processes had been developed to encourage or enforce compliance with any equal opportunities legislation. The Swedish Equality Ombudsman and the process-orientated mechanism of requiring the preparation of annual equality plans acted as catalysts to ensure compliance with the Swedish equality legislation on the basis of threatened action and threatened penalty.

3. Positive action/positive discrimination programmes:

The terms "positive action" and "positive discrimination" have no accepted definition and are often used as if they are interchangeable. They refer to a strategy whereby positive measures are put in place to redress past (historical) discrimination and thereby promote equality between women and men. Such measures can range from the pedestrian to the radical. At one end of the scale they can refer to the provision of special training for women so that they can obtain employment in areas where there are few female employees. At the other extreme the strategy can require the setting of quotas to ensure that women gain access to areas of public life or professions where they are currently underrepresented.

All the states participating in the PIP project used the concept of positive action/positive discrimination. In Portugal positive action was said to be "invariably associated in the law with those measures aimed at protecting

maternity" (Casqueira Cardoso, 1999: 39). In other words it was seen as permitting legal initiatives designed to reconcile work and family life. In the United Kingdom positive action principally took the form of special training to encourage men and women into occupations where they were under represented (Beveridge, Nott and Stephen, 1999: 46). These examples were typical of the rather low key approach to positive action taken in the partner states. It contrasts with more radical initiatives taken elsewhere in the European Union such as Germany. The limited use made of positive action is perhaps unfortunate since the concept would seem to have a great deal to offer in tackling such phenomena as occupational segregation. One area where positive action had made an impact in some partner states was in allowing women to gain access to the law and policy-making process. Whilst the term positive action was not used, in states such as Ireland and the United Kingdom targets had been set by governments or by political parties to increase the number of female civil servants or female legislators. These had resulted in some considerable gains being made.

One of the explanations for this reluctance on the part of the partner states to adopt a radical positive action strategy may have been doubts over the legality of such initiatives. There were references in the Portuguese country report to a lack of legal guidance on positive action (Casqueira Cardoso, 1999: 38), whilst in the United Kingdom the definition of discrimination in the Sex Discrimination Act 1975 has led to rulings that some positive action schemes constituted direct discrimination against men (Beveridge, Nott and Stephen, 1999: 31). In addition, the confused state of Community law on this issue has not helped matters.

A not altogether helpful feature of the positive action initiatives that had been taken in respect of employment was the fact that the law permitted employers to instigate such schemes. There was no duty placed on employers to do so. This was the case in the United Kingdom and, as a consequence, there was a low take up by employers of such opportunities. This situation was not improved by the complexity of the relevant legislation. Moreover concerns were expressed in the Portuguese country report that positive action programmes designed to permit the reconciliation of work and family life might reinforce traditional gender stereotypes rather than tackle inequality.

4. Equality agencies:

Each of the states participating in the PIP project had one or more state equality agencies. They were state equality agencies in the sense that they are either part of government or are agencies which, although they are "independent" of government, are either financed by government or have their terms of reference determined by government or have their members appointed by government. These agencies performed a variety of tasks. Some were entrusted with the job of keeping the state's equality legislation under review and making suggestions

for its reform. Alternatively they might play a direct or indirect role in the enforcement of that equality legislation by, for example, providing advice to women who felt that they had been the victims of sex discrimination. Yet again equality agencies might act as information exchanges, publicising good equal opportunities practice to employers or government bodies. The Equal Opportunities Commission (Great Britain), Jämo (Sweden) and the Commission for Equality at Work and in Employment (Portugal) performed one or more of these tasks.

Many of the states involved in the PIP project also had an equality agency which advised it on women's issues and channelled women's views into the policy-making process. The Women's Council of Ireland (NWCI) is such a body. It represents the views of a wide and diverse range of women's organisations to government on specific policy issues.

Some equality agencies are expected to carry out research on women's status in society. The Women's Institute in Spain and the Equal Opportunities Commission in Great Britain did so. The aim of this research is to provide an accurate picture of the distinctions between men and women's lives and the impact that gender inequality has. The hope is that in the long term this research will give rise to laws and policies that can promote substantive equality between the sexes.

Apart from national equality agencies some states had regional equality agencies. This was particularly true of Sweden which had an extensive network of regional equality bodies. Every County Administrative Board was required to have an equality expert and the Boards played a key role in promoting equal opportunities.

Such agencies made, on the whole, a very positive contribution to promoting equal opportunities. Unfortunately this positive impact was adversely affected by a number of factors. These included shortages of funds and personnel; neglecting to canvas their views even when required to do so; their low public profile; the existence of competing equality agencies; the difficulties of representing the views of a diverse set of women's organisations and poor networking with other gender agencies**.** To give a single example in Portugal the Commission for Equality and Women's Rights (CEWR) is the government directorate with the lowest budget. It has the responsibility for carrying out gender assessment but it

> … is common ground that the Government forgets the consultative functions of the CEWR. The absence of any sanction for failure to consult with the CEWR may be part of the reason for this discrepancy between what the legislation says and what happens in reality.
> (Casqueira Cardoso, 1999: 50)

The CEWR has no regional network apart from a branch in Oporto. It is said that this lack of regional offices means that issues and problems at grass roots level are not communicated to the CEWR. In addition the CEWR's initiatives are not necessarily known about in the more remote parts of Portugal where substantial numbers of people live and work.

5. Ministers for Women/Ministers for Equality:

In many of the countries participating in the PIP project there was a government Minister responsible for equality or women as well as state equality agencies. There were Ministers for Women in the United Kingdom, a Minister for Equality Affairs in Sweden and in Ireland there was a Minister for Justice, Equality and Law Reform. In Spain and Portugal, in the absence of a Minister directly responsible for equality between the sexes, there was a Ministry or government Department responsible for or closely linked with the state equality agencies. In Portugal the Commission for Equality and Women's Rights (CEWR) was attached to the Prime Minister's Office (Casqueira Cardoso, 1999: 44) whilst the Commission for Equality at Work and in Employment (CEWE) was part of the Ministry of Labour and Solidarity (Casqueira Cardoso, 1999: 47). Both the CEWR and the CEWE had representatives from government departments as part of their membership.

Ministers or indeed agencies with links to Ministries have the potential to influence government policy-making and promote laws that are helpful to women. In this capacity they can act as agenda setters. More generally they can draw attention to any possible adverse gender impact of the government's policy or legislative programme. However any success will depend on the standing of such Ministers/Ministries as well as their commitment to equality. Reservations have also been expressed over the wisdom of having a specific department responsible for gender equality in case this gives the impression that other government departments are spared the responsibility of taking account of equality issues.

6. Mainstreaming/equality proofing:

This strategy calls for the auditing of laws and policies whilst they are in the process of preparation in order to determine whether they will have an adverse impact on women. This has led to a proliferation of new procedures and techniques, many of which are still under development or are in use only in a limited context. Early indications are that mainstreaming can offer many advantages over more familiar procedures - it deals with all laws and policies, it is utilised whilst those laws and policies are in the course of preparation and it makes gender everyone's concern. However, its processes are not yet sufficiently well developed and have not been in place long enough to draw firm conclusions about their advantages. Some early evidence does, however, demonstrate the pitfalls which such initiatives must avoid if they are to be

successful. For instance, in some states there was a statement of intent and no evidence to illustrate how/whether this statement was acted upon. In other states mainstreaming seemed little more than a mechanistic exercise, with no data to back up findings, a lack of consistency in analytical techniques, no evidence that those bodies with specialised knowledge were consulted, and no monitoring process. Since mainstreaming, gender impact assessment and the pitfalls associated with these procedures are of fundamental importance to this research, section four explores in greater depth the lessons which can be learnt from the country reports regarding these procedures.

- the persistence of substantial inequalities between men and women in all the partner states, despite the considerable array of measures taken to promote equality.

The country reports contained evidence that, despite some gains, appreciable inequalities persisted between the circumstances of women and men. In the workplace, differences were still apparent between men and women's average earnings. The Portuguese country report noted that,

> ... female workers still earn on average 79% of the average male worker's wages. This gap is more pronounced in the industrial sector where women workers earn on average 69% of that earned by their male counterparts.
> (Casqueira Cardoso, 1999: 1-2).

In Sweden figures produced by Statistics Sweden also showed a continuing disparity between the incomes of men and women,

> The average income from work 1996 was SEK 198200 for women and SEK 253200 for men. Women's income from work was 78 per cent of men's.
> (SCB Statistics, 1998: 71)

In some of the partner states, however, it was more difficult to assess the economic position of women as compared with that of men. In Ireland's country report, the point was made that a lack of statistical data made it difficult to assess what progress women were making in the workplace.

> One of the main gaps in statistical information relating to women's participation in the workforce, is the absence of data on pay differentials between women and men outside the manufacturing sector. Only 17% of the female workforce are employed in the manufacturing industry. No satisfactory indicators are available to monitor progress made in the area of pay equity for the remaining 83% of the female workforce. This lack of information has created difficulties in monitoring the effectiveness of equal opportunities strategies adopted to date.
> (Donnelly, Mullally and Smith, 1999: 107-108)

As a consequence the effectiveness of equal opportunities measures was assessed on the basis of impressions rather than objective data (Donnelly, Mullally and Smith, 1999: 107).

The importance of gathering statistical data disaggregated by gender was also emphasised in the United Kingdom country report. In that report the following concerns were voiced over the statistics which were available in the United Kingdom:

> However there are a number of problems with the statistics available at present. Firstly, there are large gaps in that information where areas of life which are of particular concern to women are either under-reported or entirely absent from the statistical record. Some statistical information is focused almost exclusively on men. For example, "many statistics on economic activity are primarily based on a male concept of work, that is a full-time, uninterrupted career history. They do not reflect many women's experiences of work - a part-time, fragmented career history that fits around balancing work and parenting"[iii]. This first point leads on to the second problem and that is one of small samples. Where information on matters of relevance to women's lives is not gathered systematically alongside information on matters of relevance to men, research into issues affecting women may be based only on small samples, to the detriment of the research. In turn such research is unreliable as a basis for further analysis or equality proofing measures. Finally, there is the problem of assuming gender neutrality in the gathering of statistical data; for example, assumptions are often made that there is an equal division of labour in the household or equal access to household resources. The experience of women is subsumed under the experience of men, for example where a women's position is defined in relation to the head of household, who is usually a man. In some surveys this means that a woman' socio-economic grouping is defined according to the man's socio-economic grouping - even if she has her own occupation. Without a statistical base that adequately records women's activities and interests, women's needs will remain hidden.
> (Beveridge, Nott and Stephen, 1999: 102)

The country reports also provided evidence that women did not figure as prominently in government decision-making as men though improvements had undeniably occurred. In Sweden the figures for election to the Swedish Parliament, Municipal Councils and Country Councils showed that women were in general well-represented. In 1994, for example, they made up 40% of the membership of the Swedish Parliament (Gillberg, 1999: 17-19). Progress had also been made in other countries though, as was remarked in the Spanish country report, the levels of representation achieved were still far from equitable (Arranz, Quintanilla and Velázquez, 1999: 28). In the United

Kingdom the number of women elected to the Westminster Parliament doubled between 1992 and 1997. In 1992 women MPs constituted a mere 9% of Parliament's membership. At the 1997 general election this increased to 18%. Elections for the regional assemblies in Scotland and Wales showed even greater numbers of women being elected. In the Scottish Parliament women represent 37.2% of those elected, whilst in the Welsh Assembly the figure is 40%. The explanation for this very positive development in the United Kingdom is the use of deliberate strategies by some political parties to increase the numbers of women candidates as well as campaigning by women's organisations. In Spain the female membership of the current Congress (1996-2000) stood at 22% of the total number of Deputies whilst in the Senate female senators represented 14.9% of the total membership. In Ireland women have "never comprised more than 12% of Dail membership or 10% of Seanad membership" (Donnelly, Mullally and Smith 1999: 59).

Any increase in women's holding of elected office can be regarded as a welcome development since it carries with it the possibility that, as a consequence, greater priority will be given to women's issues. The Swedish and the United Kingdom country reports highlighted research which suggested that women politicians gave greater priority to gender/women's rights and social policy as compared with their male colleagues (Gillberg, 1999: 16; Beveridge, Nott and Stephen, 1999: 11).

A note of caution needs to be sounded regarding these gains for women. With the exception of Sweden, the numbers of women holding elected office were still low. Clearly the factors which conspired to keep women from elected office varied from state to state. In Ireland the following points were identified to "explain the dearth of female legislators in Ireland" (Donnelly, Mullally and Smith, 1999: 60).

a) specific historical and cultural experiences that fostered a masculinist arena;
b) a political system where selection and election remain localised;
c) a strongly Catholic social environment where women's socialisation preconditions a majority to regard children, husbands and homemaking as primary and deserving full-time attention;
d) low levels of participation by women in the labour force.

In the United Kingdom the working practices of Parliament and the possible reluctance of local constituencies to choose women candidates were cited as reasons for the lack of women in Parliament (Beveridge, Nott and Stephen, 1999: 7). Even in Sweden there were complaints from female members of the Swedish Parliament that they had been sexually harassed and their views not taken seriously (Gillberg, 1999: 16).

All this seems to suggest that it is particularly difficult for women to gain

access to elected office. Clearly if more women are to hold elected office the political parties have to commit themselves to achieving this goal not merely as a matter of political rhetoric but by taking practical steps. The country reports identified a number of ways in which it had been sought to realise this objective. In the United Kingdom, for example, a sustained initiative by the Labour Party to secure the election to more women to the Westminster Parliament accounted for the sharp rise in the number of women MPs after the 1997 general election. Unfortunately, however, the Labour Party was forced to abandon its initiative when it was found to be in breach of the anti-discrimination legislation. Commentators speculated that one of the Labour Party's reasons for taking this initiative was to increase its "appeal" to women. In Sweden pressure was put on the political parties in the 1994 general election by a coalition of feminists who threatened to form a women's party (Gillberg, 1999: 14). As a consequence, the Social Democrats who had dominated party politics in Sweden, decided that "every other candidate on their election lists should be a woman" (Gillberg, 1999: 14).

In addition, attention was drawn by one of the speakers at the Manchester Colloquium to the ways in which government could attempt to influence the number of women holding elected office, without the use of legislation or quotas. These included setting targets and making sure that women could operate successfully once they achieved elected office (Verloo, 2000).

Apart from gaining increased access to elected office, the numbers of women involved in government had increased in many of the states participating in the PIP project. In the United Kingdom the number of public appointments held by women had grown steadily over the years from 19% of national level appointments in 1986 to 32% in 1997 (Beveridge, Nott and Stephen, 1999: 58). It was, however, pointed out in some country reports that whilst an increase in the rate of women's participation in government was very welcome what was equally important was the level at which women participated in government and whether they were evenly represented at all levels of decision-making or merely the lower levels:

> One cannot only look at the equal numbers of men and women but must also look at the positions they hold by breaking down these figures. (Gillberg, 1999: 16)

Judged on this basis it appeared that many of the posts occupied by women were low level appointments and that men still dominated the higher reaches of government. In Sweden, for example, it was reported that,

> …59 percent of the governmental political experts are men. Of Parliament's 16 different committees, only five are headed by women, and in those cases the Vice-Chairman is a man. As regards civil servants within the ministries, two thirds of them are men.

(Gillberg, 1999: 16)

- the sometimes quite complex system of bodies, processes and policies which exist in some partner states to address women's concerns and interests, and the great diversity of these bodies, processes and policies. Whilst to some extent the forms adopted reflect the legal and political culture of the state, there is also a sense of *ad hoc* development and an absence of models of *good practice.* Whilst much has been done recently within the EU to further knowledge and networks in this area, there is still a sense of experimentation in several states, without clearly defined goals.

In the country reports there were numerous occasions when this sentiment was expressed. The Irish country report concluded that the effectiveness of the system for promoting equality in Ireland was adversely affected by the ad hoc way in which equality was pursued.

> Recent years have seen an increasing awareness of the need to integrate a gender dimension into the law and policy making processes in Ireland. As yet, however, this has not translated into systematic changes in the way in which such processes operate. The process of "mainstreaming" equal opportunities between women and men does not seem to have moved much further beyond the development of women-focused policies on an *ad hoc* and piece-meal basis. If we are to understand "mainstreaming" as requiring that the gender dimension is actively and openly taken into account at all stages of the policy-making process – both in defining and implementing policy proposals – then significant changes are still required. Equality continues to be referred to as "*a general aspiration rather than a definite objective, backed up with specific policies, targets and procedures, subject to systematic monitoring and review.*"
> (Donnelly, Mullally and Smith, 1999: 109)

The Portuguese country report contains further proof of how the pursuit of equality between the sexes can be frustrated by apparently ill-considered measures. The Global Plan for Equal Opportunities was adopted in 1997. Its general objective is to integrate the principle of equal opportunities into all economic, social and cultural policies (Casqueira Cardoso, 1999: 52). The whole enterprise has, however, been jeopardised by a lack of funding and a lack of clear lines of responsibility for executing the Plan. It would appear that the Plan has been put in place without attention being paid by government to how it might be most efficiently implemented.

- the lack of influence of many of the bodies, processes and policies identified. There are a variety of reasons for this - bodies may lack the ability to ensure that their views are acted upon by government, policies may have vaguely defined targets and processes for determining gender impact may be recondite in the way in which they operate.

This lack of influence was apparent in many of the countries involved in the PIP project. In Portugal the Commission for Equality and Women's Rights (CEWR) has the task of "scrutinising policy- or law-making initiatives from the Government or the Assembly for their differential impact on men and women" (Casqueira Cardosa, 1999: 50). This is a legal duty imposed on the CEWR by Decree-Law 166/91. In practice, however, neither the government nor the Assembly systematically consult the CEWR for its views.

> It is common ground that the Government forgets the consultative functions of the CEWR. The absence of any sanction for failure to consult with the CEWR may be part of the reason for this discrepancy between what the legislation says and what happens in reality.
> (Casqueira Cardoso, 1999: 50)

In the case of the Assembly the same pattern was perceived and proposals for new laws are not systematically sent to the CEWR.

In Sweden the mainstreaming directive was felt to lack impact because "it is unfortunately seldom implemented or applied to its full extent due to the lack of knowledge (of equality norms) and of proper compliance and enforcement mechanisms" (Gillberg, 1999: 52).

- the lack of procedures for objectively measuring the success of those bodies, processes and policies which focus on improving the situation of women.

In Spain the effectiveness of the Equal Opportunities Plans was questioned on a number of grounds, particularly the fact that self-evaluation was used to measure results.

> On the one hand, methodologically, all self-evaluation (here undertaken by the same civil servants that draw up the Plans and put them into effect) currently involves such a considerable subjective slant (the tendency to magnify one's actions) that it annihilates the credibility of the results obtained in this way. On the other hand, the goals put forward by the Plans are neither clear nor specific, so it is technically impossible to settle definitively the degree to which those goals have been realised and implemented.
> (Arranz, Quintanilla and Velázquez, 1999: 65)

- the radical political and legal changes that are underway in some partner countries.

The legal, political and institutional landscape in the states involved in the PIP project did not remain static during the course of the project. For example, Ireland was in the process of amending its anti-discrimination legislation to

focus on a variety of disadvantaged groups not simply on women. Whilst it is impossible to predict the long-term impact of this change on women, it is clear that such an initiative is significant for women. From the outset concerns were expressed in Ireland that focusing on a variety of disadvantaged groups might mean "that the significance of gender as a factor in social exclusion and inequality may no longer be prioritised" (Donnelly, Mullally and Smith, 1999: 81).

In the United Kingdom a more general programme of constitutional reform was initiated during the course of the PIP project. Legislative power was devolved to the regions and many of the rights guaranteed by the European Convention on Human Rights were given the force of law in the United Kingdom. It is yet to be seen what the long-term effects of these changes will be and whether they will have a positive or negative impact on women. The PIP project did come across evidence that general changes to the legal, political and institutional landscape with no apparent direct relevance for women can and do have unforeseen consequences for initiatives to eliminate inequality. In the Netherlands, for example, an initiative to integrate gender into development policy experienced some early success. A restructuring of Dutch foreign policy, however, jeopardised these gains by implying that gender was relevant not to development policy as a whole but merely certain aspects (Verloo, 2000).

Findings of relevance to gender impact assessment and mainstreaming

The country reports were a source of data that was particularly significant when determining how best to integrate mainstreaming/gender impact assessment into a state's law and policy-making framework. The following considerations were particularly relevant and had to be taken into account if such an exercise was to succeed.

- The diversity of the institutional, legal and political landscape in the participating states.

Whilst this diversity was to be expected, it carries with it consequences which must be addressed if mainstreaming/gender impact assessment is to be successfully integrated into a state's institutional, legal and political landscape. Each of the states participating in the PIP project had some process or procedure which they described as "mainstreaming" or "gender impact assessment". It was often unclear why these mechanisms had been put in place. On the one hand it could have been in response to international initiatives such as the Beijing Conference. On the other hand it might have been in reaction to European Union initiatives on mainstreaming.

The EU's commitment to mainstreaming can be traced back to the Third Equal Opportunities Action Programme which acknowledged the need to integrate

equality into the Community's economic and structural policies (European Commission, 1990; Rees, 1998: 62). The Fourth Action Programme is explicit in its commitment to mainstreaming (European Commission, 1995) and is supplemented by a Commission Communication on incorporating equal opportunities for women and men into all Community policies and activities. This document envisages that mainstreaming will be pursued at both EU and at Member State levels, developing "a European approach to equality which is both pluralistic and humanistic and which constitutes the basis for action both in the Community and in the rest of the world". While the bulk of the document is concerned with areas falling within the formal competence of the EC institutions and where a Community role has already been established (employment, the labour market, women entrepreneurs and assisting spouses, education and training and development aid), it also acknowledges that there is room for improvement in a number of other areas. These include violence against women, women refugees, the trafficking of persons (specifically sexual tourism and trafficking in relation to prostitution), the recognition of judgements in the field of family law and the legal security of family members who are third country nationals. Clearly in relation to many of these fields the Commission can only urge a mainstreaming approach on the Member States, on whose co-operation it is almost entirely dependent.

> [T]he progressive implementation of these guidelines calls for a significant increase in co-operation within the Commission's departments and strengthening of the partnership with the Member States and the various players and organisations concerned.
> (European Commission, 1996: 21)

The impact of the EU's mainstreaming initiative in those states involved in the PIP project was far from clear. Some states already possessed a procedure or a set of tools which could loosely be described as a mainstreaming procedure. For example in the United Kingdom, two procedures known as Policy Appraisal and Fair Treatment (PAFT) and Policy Appraisal for Equal Treatment (PAET) had been used from the 1980s onwards to assess policies for their impact on a range of target groups including women. These procedures have more recently become identified with mainstreaming, though arguably they lack many of the essential features of this strategy. Recent constitutional changes in the United Kingdom have, however, served to ensure that mainstreaming takes a different form in different contexts. The PAFT Guidelines in Northern Ireland have assumed the status of a statutory duty under s. 75 of the Northern Ireland Act 1998 and a significant emphasis on community involvement has developed. In Scotland and Wales the establishment of new Assemblies has dominated the political process and it is within this democratic context that shape has been given to the concept of mainstreaming. By contrast in Whitehall there has been little change and mainstreaming initiatives have been largely confined to the executive and bureaucratic arms of the state. Among local authorities in the United Kingdom,

mainstreaming approaches have had a very varied reception and there is little or no central co-ordination of local authorities in this matter. But throughout the United Kingdom the trend is to address gender alongside other inequalities and to emphasise the importance of participation in decision-making, user-involvement and consultation.

In Ireland mainstreaming has in part been addressed by the development of inclusionary politics involving a "partnership" approach which embraces the community and voluntary sectors. Efforts to introduce gender-proofing in policy development were closely allied to the development of poverty-proofing procedures, producing a distinct focus on social exclusion (Government of Ireland, 1996; Mullally, 1999; Donnelly, Mullally and Smith, 2000) . This has been accompanied by the development of single institutions to handle discrimination whether arising from gender, race, ethnic origin, religion, sexual orientation, disability or age, these "equal opportunities" agencies being supplemented with specialised bodies addressing phenomena such as unemployment, poverty or social exclusion.

Sweden, for example, had moved towards according privilege to gender as a factor of discrimination of a fundamental nature having ramifications in all other fields and, like the EU itself, accords gender discrimination policies priority status. The development of effective policies is seen as an expert task requiring specialist knowledge and a sound understanding of the pathology of gender discrimination, so that the particular policies developed are not regarded as transferable to other forms of discrimination. Mainstreaming policies have focused on the development of gender impact assessment tools and on the development of appropriate expert resources (Gillberg, 2000; Lundkvist and Thoursie, 1997).

In the remaining two countries in the PIP study, Spain and Portugal, mainstreaming had by comparison hardly left the drawing board. Each of these states had adopted a plan or policy statement which apparently committed them to mainstreaming but there are as yet no procedures in place to give effect to this commitment. Thus in Spain the Third Equal Opportunities Plan 1997-2000 (Instiuto do la Mujer, 1997) states as one of its ten objectives the aim "to integrate the dimension of equal opportunities into the policies of the public administration and institutions and to foster co-operation with both Non-Governmental Organisations and international organisations by mobilising all policies to attain equality" (Instituto do la Mujer, 1997: 11). However, no specific mechanisms or tools or monitoring or review procedures are established to achieve this (Arranz, Quintanilla and Velázquez, 2000). Similarly in Portugal the Global Plan for Equal Opportunities has the single general objective of integrating the principle of equal opportunities between men and women into all economic, social and cultural policies, coupled with specific objectives in key areas. There is, however, an unwillingness among key bodies to take responsibility for implementation and assessment of the Plan

and a general lack of co-operation between the relevant actors (Casqueira Cardoso, 2000).

This review demonstrates that the responses of states to mainstreaming initiatives have varied enormously. Levels of political support for this concept are very different and this has played an extremely crucial role in determining the effectiveness of measures taken in the name of mainstreaming. Responses have also been shaped by both fixed and fluid features of those national political and legal landscapes into which the mainstreaming concept was projected. Where the concept could be harnessed to ongoing gender policy-making initiatives or even to wider constitutional reforms this has been done in a somewhat unplanned and opportunistic fashion. By contrast in states where gender policies were already suffering from lack of support, new developments have been low-key and have had little impact.

Most states appear not to have explored at any length the strategy that underlies mainstreaming and sought to put that into practice. Instead states have harnessed mainstreaming, and responsibility for mainstreaming, to some existing feature of their legal or political landscape, thus replicating the pre-existing diversity in equality structures and policies. The EU, for its part, lacks the legal machinery to force Member States to adopt "best practice". So the impact of what could be a very important and productive initiative is blunted from the very outset.

- Feminist discourses and feminist movements/strategies were differently situated in the current political landscape in different states.

This was seen as an important consideration when determining how to promote the acceptance of mainstreaming and the use of gender impact assessment. While it was helpful in some states to pursue an overtly feminist agenda, in others this would result in work being sidelined or ignored. Mainstreaming would operate more successfully in some situations if it was tied to the process of accountability, to democratic values or to a rights culture, than if presented explicitly as a feminist project. This would fit in with the quest by states for improved forms of government as well as the EU's efforts to address issues of transparency, accountability and governance at a supranational level.

- The feminist movement has been the instigator of a great deal of literature/research on how legal and political systems are the source of "hidden" discrimination since they favour male values and has produced a significant body of qualitative evidence about women's lives and the gendered social systems of EU Member States. This should be acknowledged when introducing a gender impact assessment model into a state's legal and political system. Those bodies with a knowledge of gender issues and the manner in which gender is socially constructed should be involved in any such procedure. Their "state-of-the-art" knowledge and

research should be incorporated into any such procedure and this fact monitored.

On this point it is worth mentioning that several partner states drew attention in their country reports to a lack of contact between the feminist movement and state equality agencies. For example, in Spain the relationship between the Women's Institute (IM) and women's groups was apparently one of mistrust:

> ... (both formal and informal) relationships between the IM and the various feminist collectives have been scare (with some notable exceptions) and, sometimes, strained. The reasons for this lack of communications are to be found, not only in the difficulties entailed by the fragmentation of the movement, but also in the mistrust developed on both sides. On the one hand… many of the individuals working in the IM have never depended on women's associations. This is probably why they may think that the promotion of equality policies must be exclusively, either entrusted to them, or a task of the Government. On the other hand, the evolution of the feminist movement in Spain during the last twenty five years has brought about distrust among feminists towards political power. Feminists are suspicious of either being politically used for the electoral interests of the political parties, or of having the feminist movement co-opted or ideologically tamed.
> (Arranz, Quintanilla and Velázquez, 1999: 65)

- Women's increasing but still relatively low levels of participation in government raised questions about how well any mainstreaming/gender impact assessment might work in practice without sufficient numbers of women to give it political and operational support.

Whilst in principle it should not matter whether mainstreaming/gender impact assessment is acted on by men or women, some country reports did indicate that the presence of women in government was a factor in securing the success of these procedures. The feeling was that if these procedures depended on men for their implementation then their application might be more superficial and intuitive than would be the case if substantial numbers of women were involved. In some quarters women's involvement was seen as essential to mainstreaming's success.

B. OBJECTIVE TWO

The PIP project's second objective was to evaluate how well the range of "gender impact assessment mechanisms" identified in the country reports worked in practice. With this in mind two case studies were undertaken to give this practical dimension to the analysis. They took a situation where the partner states faced an identical problem but were free to act on it within their own

domestic law and policy-making context. Attention was paid to how the general law and policy-making machinery reacted to these issues as well as those mechanisms designed specifically to address women's concerns and interests. These reactions allowed comparisons to be drawn and conclusions to be reached on how well or how badly particular mainstreaming/gender impact assessment mechanisms worked and why this is so. The case studies also allowed an appraisal to be made of whether events following any assessment of gender impact, such as the need for political compromise, prevented the application of the policy/law which would have worked to women's greatest advantage.

CASE STUDIES

Partner Responsible	ALL with the exception of Spain
Other Partners Involved	
Duration	6
Objectives	The conduct of two case studies - one on sexual harassment an the other on the Barber decision - to evaluate how well or badly the mechanisms identified in the Work Package Two function and why.
Methodology	Each partner will document their state's legal and extra-legal responses to the Community's Code of Practice and Recommendation on sexual harassment and the European Court of Justice's decision in Barber. One of the key issues will be an assessment of the role of those mechanisms identified in Work Package Two in shaping responses to these measures. In order to evaluate their contribution, opinions will be pursued in official and academic publications and interviews will be conducted with officials and expert commentators on such issues as: (a) why a particular mechanism has or has not proved influential or worked well; (b) the significance of outside factors such as costs; (c) whether the mechanism or strategy was structured in such a way that a favourable outcome was hard to achieve e.g. lack of appropriate statistical information. The information that is elicited by means of interview will be based on lines of inquiry that have been agreed between the partners.
Deliverables	Case study reports.

Subject Matter of the Case Studies

The thinking behind the case studies was that two EC inspired initiatives

should be selected which set the same policy objectives for the partner states. It would then be possible to evaluate how each state reacted and what use, if any, was made of their mechanisms for assessing gender impact.

The subjects chosen for the case studies were the initiatives taken by the Community regarding sexual harassment, namely the Commission's Recommendation and Code of Practice on protecting the dignity of women and men at work[iv] and equal treatment in relation to pensionable age, as considered in *Barber*[v]. The partners, with the exception of Spain, compiled a report setting out the legal and extra-legal steps that had been taken to act on the Community's initiatives, how effective those steps had been, what part those mechanisms for assessing gender impact had played in this process and what influence, if any, they had exerted.

The legal, political and institutional landscapes into which each measure was "released" varied enormously, in terms of what had already been secured in law and of political commitment to the ideals which the EU measure in question encapsulated. Also of importance was the fact that some states might already have secured or anticipated the measures either in whole or in part, whether at the political or legal level, and whether centrally or in some other way (e.g. local/regional measures/devolved powers/private sector initiatives/NGO activity). In relation to sexual harassment, the Council of Ministers had previously adopted a recommendation in 1984 on the promotion of positive action for women[vi] which had referred *inter alia* to measures having a bearing on "respect for the dignity of women at the workplace" and had commissioned a report from the Commission on the subject of sexual harassment[vii]. In relation to *Barber* the previous decision of the ECJ in *Bilka Kaufhaus*[viii] had already established in relation to the issue of access to/the right to join occupational pension schemes that such entitlement did constitute *pay* within the meaning of Art. 119EC. Directive 86/378/EEC[ix] purported to permit occupational pension schemes to continue to differentiate in respect of pensionable age *inter alia* (though Barber effectively restricted these exceptions to non-pay elements of the employment relationship).

Content of the case studies

1. Introduction

1.1 The pre-history of the case study in the partner state's law and policy landscape *before* the EC initiative.

This section of the report outlined the existing policy, or lack of it, in the partner state, that related to the case study in question (pensionable age or sexual harassment). In particular partners were asked to comment on the following issues. Had there been any political commitment to this topic? Was there any pre-existing legislation that related to this topic? Where was

responsibility for this issue located within the law and policy-making landscape? What was the history of interest-group involvement, official initiative, consultation, lobbying on this issue? What other facts and statistics, where available, were relevant to the issue?

1.2 The general implications of the EC initiative

This involved the identification of the main challenges to the status quo raised by the ECJ judgement/Council Recommendation. Partners were asked to evaluate the standing of these EU measures within their national context and whether any consequences would accompany non-compliance with the ECJ judgement/Council Recommendation.

2. The reception of the EC initiative in the partner state

This section of the report required partners to analyse the impact of the EC initiative (both before and after the ECJ judgement/adoption of the Council Recommendation). In describing the responses within each state it was essential for partners to identify the various stages through which such responses developed, the institutions and personnel involved and the identifiable "inputs" and "outputs" of this process (consultations, reports, studies, draft legislation, parliamentary debates). Specifically partners were asked to devote a section in their case study to the following issues :

2.1 The impact of the EC initiative before its adoption in the partner state

Partners were asked to give an account of any preliminary reactions to the EC initiative. They were expected to highlight any intervention/lobbying by official or non-official groups from within the partner state, whether unilaterally or on an EC-wide basis (e.g. via the ETUC, UNICE). Their opinions were also invited on the levels of awareness within and beyond government in respect of the initiative in question; on media reaction to it; on any doctrinal stance taken on it; on whether any reports or studies were commissioned on it; on the attitude of the partner state in debates relating to ECJ judgement/Council Recommendation.

2.2 Short and medium term reactions to the EC initiative

This section of the report focused on the partner state's short and medium term reactions to the EC initiative. The partners were asked to detail the allocation/assumption of responsibility for the issue and what policy initiatives emerged. They were expected to track such policy initiatives through all their subsequent stages, paying particular attention to whether or not the processes/machinery outlined in the country reports were used. If they were not, partners were asked for their opinions on why this was so. It was

recognised that in order to evaluate fully how well or how badly individual mechanisms worked required a sophisticated range of techniques since knowing an outcome had been unfavourable did not explain why this was so. As a consequence it was expected that interviews would be conducted with relevant officials, any published material, including parliamentary debates, would be analysed and expert opinion would be consulted where this was felt to be appropriate. Partners were asked to place particular emphasis on the following procedural issues:

- the stage at which recourse was had to a particular mechanism;
- the role which women played in the application of any gender impact assessment mechanism;
- the quality of any data employed in assessing gender impact.

Partners were also advised to consider whether or not the EC measure was itself a source of difficulty because, for example, of the vagueness of the provision.

2.3 Analysis of short and medium-term outcomes of the EC initiative

The analysis of the partner state's reaction to the EC initiative concluded with an account of any short and medium-term "outcomes":

- direct outcomes - for example, any improvement or decline in position of women; and
- indirect outcomes - the wider contribution made by policy initiatives on this issue to the concept of equality or the debate on equality in the partner state more generally.

3. The future

In this section of their report partners were asked to comment on any issues which were relevant to the case study but remained unresolved. It was anticipated that they would identify the factors which prevented these issues being dealt with earlier and what changes were needed if they were to be resolved in the future.

4. The lessons from the implementation of the EC initiative

The case study concluded with an analysis of its general implications for policy-making in relation to women's issues within the partner state. Comments were invited on whether the case studies had highlighted any particular strengths or weaknesses in the machinery for assessing gender impact mentioned in the country reports and whether any weaknesses had subsequently been addressed. Any significant differences between the two case

studies were to be highlighted in this section.

Methodology

As with the country reports, a socio-legal methodology was adopted. Little difficulty was encountered with the case study on sexual harassment. However the Barber decision, which was central to the other case-study, has had very different implications in each partner state, causing major legal change in some states such as the United Kingdom and almost none in others such as Portugal. Thus it was necessary to adopt a methodology which would allow for a full discussion of the consequences of the Barber case, whilst allowing for the diversity of legal situations in the partner states. The methodology adopted required the many general issues regarding pensions and equality which form the background to the Barber case to be addressed in full, in order that the implications of the decision could be fully understood. The impacts of the Barber case were then discussed against this background. It also required a full review of issues of equality in relation to pensions which have yet to be addressed, so that the changes, if any, which followed from the Barber decision could be assessed in context.

Findings

The case studies provided some interesting data on how well or how badly those gender agencies and gender impact mechanisms identified in the country reports worked. The results of the case studies confirm the criticisms that were made regarding these mechanisms/agencies in the country reports. Specifically, the case studies highlighted the following:

◊ That when faced by a common dilemma, such as sexual harassment, states are very much influenced by their individual legal and political systems as well as traditions. States utilise existing concepts and methods to deal with a particular equality issue. For example, once sexual harassment was identified as an issue in the United Kingdom one of the strategies used to deal with it was litigation and the claim that such behaviour amounted to sex discrimination. Other participating states, such as Sweden, made little or no use of a litigation strategy. Instead pressure was brought to bear for the passage of legislation to deal specifically with sexual harassment.

◊ That a state's capacity/willingness to address equality issues and the equality measures it adopted were influenced by available finances.

◊ That unless clear lines of accountability for implementing equality measures exist, states can get away with doing very little in response to EU pressure to make legal and political adjustments. In this connection it should be recognised that Member States themselves are not the best judges of their own performance – there is a need for the EC Commission to make itself

accessible and open to a range of interests if it is to be well-informed about the situation within Member States. Furthermore, targets and monitoring processes are required to enhance accountability to provide some counterbalance to financial pressures which will often otherwise override any responsibility to take into consideration the results of any gender impact assessment

◊ That unless a significant degree of gender awareness exists within policy-making structures and among those who make policy, few issues will be deemed to require gender analysis. So long as a state sees a particular issue or problem as already being addressed by specific legislation, for example equality in pension provision, then a comprehensive gender analysis of that issue will not be seen as necessary. Legal measures to deal with direct discrimination should not preclude the need for gender impact assessment in general which may well expose forms of hidden discrimination that remain in society.

C. OBJECTIVES THREE AND FOUR

The project's third objective was to identify (from the evidence of the country reports and the case studies) features which in a national context produce an effective means of addressing women's concerns, as well as aspects of the policy and law-making processes of the partner states which have strongly influenced the ability and commitment of policy-makers to accommodate gender-based concerns. Following on from this, the project's fourth objective was to develop a model of gender-auditing able to accommodate the specific policy and law-making processes of individual states as well as those of the European Union. In order to produce a list of the qualities a gender impact mechanism must possess in order to function effectively, it was necessary to sift the evidence provided by the case studies. Only once such features had been isolated was it possible to construct a model which exploits these positive aspects to the full, in order to achieve maximum effect.

MAINSTREAMING: GENDER-AUDITING MODEL

Partner Responsible	FLRU
Other Partners Involved	ALL with the exception of Spain
Duration	4
Objectives	The isolation of the characteristics that a successful gender-auditing procedure must possess.
Methodology	The country and case study reports will be analysed by the partners in order to isolate what features a gender impact mechanism should possess in order to work well. In doing so particular attention will be paid to the degree to which a state's law and policy-making processes influence how efficiently a particular procedure works and whether that national experience can yield a feature or strategy that will work well in different circumstances. Views will be exchanged on the features a successful gender-auditing mechanism should possess if it is to function successfully at a European as well as a national level. This means that the partners will have to be alive to how the law and policy-making is conducted within the Community as well as within their individual Member State. The model which emerges as a result of this exchange of ideas will then be discussed and explored at a colloquium especially convened for this purpose. Invitations to attend the colloquium will be extended to individuals not involved in the project so that their views/criticisms can be received on the conclusions reached.
Deliverables	A proposed model for a gender-auditing mechanism.

Methodology

In order to devise a gender impact assessment mechanism, it was necessary to draw on:

- the data that had been accumulated in the first stages of the study;
- criticisms that had been offered when papers relating to the project had been presented at conferences;
- comments from government officials and equality experts who had been interviewed in the course of the project;

- academic commentaries on the process of gender impact assessment;

- experiences from other jurisdictions not involved in the project.

A final version of the gender impact assessment procedure was produced after circulating a draft version to the partners and then presenting the amended version to the participants at the Manchester colloquium. The final version was produced subsequent to the Colloquium and takes account of comments made there as well as some final interviews with policy makers.

Findings

Based on the findings from the national reports and case studies a model has been produced for gender-auditing which could function as an integral part of the law and policy-making processes of the European Union and its Member States. This procedure would be used to assess all policies and legislative proposals for their gender impact and possible adverse consequences for women **before** those measures were acted upon. At a time when the European Union and individual Member States have committed themselves to the notion of "mainstreaming" equal opportunities, that is integrating equal opportunities into the process of preparing, implementing and monitoring all policies, measures and activities at Community, national, regional and local level, the case for gender-auditing is a very powerful one. It would be of considerable benefit to European and national policy-makers if policies and legislative proposals could be assessed for their impact on women before they were put into effect since this would enhance the impact of social integration policies by highlighting their weaknesses whilst at the same time alerting policy-makers to the negative effects of apparently gender-neutral policies. The existence of such an evaluation process would not mean that a particular proposal could not go ahead if it were shown to have an adverse impact. Instead it might enable that adverse impact to be reduced by adjustments to the proposal. Alternatively, if that were not possible, the policy might still proceed but in the full knowledge of its negative impact and perhaps on the understanding that women might be compensated in some fashion.

What the country reports and case studies demonstrate is that some gains in promoting equality have undoubtedly been made. Those gains are not consistent within the participating states and the trigger for such gains varies. In some cases it may be Community law but in others it may be as a consequence of internal pressures. The traditional strategies for promoting equal opportunities have produced limited results and this may be why, in many participating states, new strategies have been adopted, most particularly mainstreaming. It seems, therefore, if gender is to be integrated successfully into law and policy-making, full use must be made of the whole range of strategies for promoting equality starting with mainstreaming. If there is an

effective procedure for mainstreaming then all laws and policies may be audited for their gender impact. The more traditional equality strategies can then be utilised more effectively. The anti-discrimination legislation can itself be mainstreamed for maximum impact and can then be used to tackle individual instances of discrimination which will still occur. Mainstreaming can also ensure that the views of equality agencies are taken into account and that constitutional guarantees of equality have a practical impact.

Many previous studies and commentators have identified weaknesses in existing strategies for furthering equality and many of these were supported in the country studies. If mainstreaming is to be pursued as a strategy for addressing inequality the lessons of the past must be learned. Common observations have identified the following failings:

- lack of resources: Equality agencies in particular lacked the resources to carry out their task of promoting equal opportunities;

- lack of consultation: Most partner states had some mechanism in place to evaluate laws and/or policies for their gender impact but these did not appear to work well because of a lack of consultation. One reason for this may be the apparent lack of involvement of individuals/agencies with relevant knowledge. Another reason may be that although there was a centralised system of policy-making that included a consultation phase, it was not “real” because it was not as complete as it could have been;

- lack of information: There was a lack of data on women since statistical information was not always disaggregated according to sex making it hard to predict what effect a particular action would have on women;

- confidentiality: It was hard to determine what impact a particular strategy such as mainstreaming was having since many governments insisted on confidentiality in relation to policy-making;

- politics: The influence a Minister for Women might have on, or the input an equality agency might make into, the law-making process, was often a political matter. A government opposed to promoting equality could simply sideline equality agencies or terminate the office of Minister for Women;

- judicial interpretation: This was significant in those countries where there was a great deal of emphasis on litigation but also in those countries with a constitutional guarantee of equality. Unhelpful interpretations of the anti-discrimination legislation or of an article in the constitution can be extremely counter-productive;

- competition: In some countries there were several agencies dealing with the

promotion of equal opportunities between men and women so there was a problem of resources and the allocation of responsibility. In addition there are other groups seeking equal treatment, for example for the disabled or ethnic minorities, who may be in competition for resources and may well be seeking to take advantage of the same strategies, e.g. mainstreaming. This has led to speculation that it could create an equality hierarchy where, for example, racial equality is seen as more important than gender equality, and bodies compete amongst each other to retain a given sphere of competence or to maximise their potential authority at the expense of other groups;

It is thus necessary to address the context in which mainstreaming will flourish as well as the practical requirements of any such process.

Successful Mainstreaming: The Context

- Political Commitment: Without political commitment at the highest level then processes such as mainstreaming become either a mechanistic exercise with no real purpose to them or an empty declaration of intent.

- Resources: If gender is to be successfully integrated into law and policy-making then resources in terms of money and personnel have to be devoted to the process. Money has to be devoted to collecting relevant data, personnel have to be trained to be aware of the possible gender implications of their actions rather than this being an intuitive process. Agencies with gender expertise have an important role to play in ensuring that gender is successfully integrated and hence need adequate resources to perform this task.

- Gender Awareness: It is necessary to continuously develop awareness of the reasons why traditional equality measures have not worked well. In particular gender is concerned with the way in which the roles of the sexes are construed in society. This social construction can then lead to occupational segregation, the burden of childcare falling on women and violence against women. Mainstreaming can only be successful where due consideration has been given at all levels to this subtext that runs through society. At the political level, it may be necessary to foster better awareness of gender issues to enable and assist political actors, such as parliamentarians and NGOs to play a full role in ensuring that gender issues have been addressed. On a practical level, data must be available, particularly disaggregated statistics, that highlight the manner in which sexual stereotypes are manifested in society. If the kind of data that is needed for gender impact assessment is lacking, relevant data and information may be available, for example in the form of case studies, from local NGOs working on gender equality issues. This is a way also of getting

data/information on women in disadvantaged groups that might not be available in official statistics.

- Openness of Procedure and Participation: There need to be clear directions on how exactly gender is to be integrated, including some procedure for gender impact assessment, and sufficient transparency to demonstrate that such guidance is being effectively acted upon. Integrating gender successfully requires the participation of groups and individuals who have first hand experience of the phenomenon, to ensure that the process is more than a paper exercise. So channels have to be developed to make sure this happens rather than leaving it to the good offices of those personally responsible for integrating gender.

Successful Mainstreaming: The Content

If mainstreaming is to function successfully then a number of specific issues have to be addressed:

- Responsibility and Accountability: the gender impact assessment procedure must be suited to the context in which it is to operate. This includes the political and legal culture in which it is to operate, the resources and expertise available, the goals to be pursued and the level at which gender impact assessment is to be carried out. But more specifically, it must be explicitly stated who is to be responsible for the adoption or adaptation of a model for a particular area of operation and who is to be accountable for its implementation, within an individual state system. A chain of accountability needs to be firmly established and the role of government, parliaments or other quasi-governmental bodies made clear. Detailed guidelines need to be issued that specifically cover the issues of responsibility.

- Scope: gender impact assessment procedures must specify clearly to whom they apply, who is to carry out such assessments and on which laws and policies, and who is accountable for the process. The very purpose of mainstreaming would be undermined if substantial areas of policy-making were exempted from the scope of such obligations for instance, by the use of inappropriate screening criteria. It is particularly important to assess financial policies and the allocation of budgets. It will be necessary to establish a process of review of existing laws and policies. It will be necessary to adapt gender impact assessment procedures to the specific circumstances and level of law and policy being analysed (local, regional or national). In the modern state where many governmental functions have been devolved to non-governmental bodies it will be particularly important to draw the scope widely and to clearly establish the obligations of such bodies and the chain of accountability. Similarly, the private sector should be

obliged to conduct gender impact assessment on policies where appropriate, for example in relation to all aspects of employment practice, remuneration and service delivery.

- Detailed Guidance on the Gender Impact Assessment Procedure should be issued to administrative officials. This should address the following points:

◊ what the objectives of gender impact assessment are in the context of their area of policy;

◊ how gender is to be incorporated into the decision-making process. i.e. at what stages of the policy-making process gender will be addressed and how it will relate to other demands such as race, age and religion, for example.

◊ how gender impact assessment is to be resourced;

◊ how training needs are to be met;

◊ how participation and openness of the process are to be guaranteed;

◊ what procedures for internal monitoring and accountability are to be established. This should include the identification of relevant indicators and the establishment of targets where possible.

- Securing Compliance: A mechanism for monitoring mainstreaming and the procedure for gender impact assessment must be established. Exactly how this is done may, once again, depend on the political and legal landscape within participating states, but consideration should be given to the following:

◊ as an integral part of the policy-making process, standards, goals and review commitments should be established which can be used to monitor the gender impact of policy and to facilitate future review. It is important that high expectations are established and maintained and that compliance is secured. In some policy areas a statutory obligation to undertake gender impact assessment may be appropriate. Sanctions should be employed as appropriate.

◊ the process of mainstreaming should be monitored by an external agency. This will enable expertise to be brought to bear, the views of agencies including equality agencies to be sought, information and good practice to be developed and shared, and an overview of performance to maintained.

◊ there needs to be an “audit” of decision-making bodies/procedures to determine who is involved, who is consulted and whether there is an

appropriate gender balance.

SECTION FOUR

Conclusions and Policy Implications

The starting point for the PIP project was the desire to explore why inequalities between the sexes still persist despite the resources and effort that have been invested in promoting equality. In particular the PIP project sought to construct a procedure for measuring the gender impact of proposed laws and policies.

Section three of this report has detailed the studies which were undertaken of the effectiveness of individual state practice in promoting equality between the sexes. These studies offered highly informative accounts of the success and failings of specific equality strategies within specific national contexts. Whilst national perspectives are important, equally important is the light they shed more generally on how best to promote equal opportunities. Taking the findings discussed in section three of this report as its starting point this section will consider what general conclusions can be drawn from them and their implications for equal opportunities policy. In particular this section will explore the insight that the PIP project has provided into the following key issues:

- the potential of mainstreaming and gender impact assessment;
- the interaction between the European Union and Member States in promoting equality between the sexes.

4.1 The potential of mainstreaming and gender impact assessment

At the conclusion of the PIP project it seemed very clear that the range of equal opportunities strategies analysed in section three had pronounced weaknesses associated with their application. Whilst they could undoubtedly be made to work more effectively given the will and the resources this would clearly be difficult to achieve. The one exception was the strategy known as mainstreaming or gender impact assessment. As section three made clear that strategy as it is currently applied in the partner states has significant shortcomings. Those participating in the PIP project felt, however, that the mainstreaming strategy was sufficiently "new" as compared with other equal opportunities strategies and that states were still receptive to advice and guidance on "best practice" on how this strategy might be made to succeed. The level of government interest in the PIP project and the willingness to put its findings to the test outlined in section five is evidence of this fact. The model for predicting the gender impact of policy detailed in section three has, therefore, the potential to influence and guide state practice.

The PIP project's focus on mainstreaming and its criticisms of other equal

opportunities strategies should not be taken as suggesting that those other strategies are now irrelevant. This is by no means the case. Although mainstreaming can make a major contribution to tackling substantive inequality between the sexes, those other strategies still have a significant role to play. Mainstreaming can indicate what policies are particularly damaging in their gender impact. Positive action programmes, however, are concerned with encouraging women to participate to a greater degree in society. Indeed by pointing out the limitations of those other equal opportunities strategies, the PIP project may contribute to pressures to introduce improvements and reforms.

Those participating in the PIP project are conscious that the model which they present in section three contains a list of issues which have to be carefully thought through if mainstreaming is to succeed. If the PIP project's intention is to communicate best practice to states then it might be criticised in not being specific enough in the advice it offers. Anyone looking for a set of tests or criteria which when applied will guarantee the integration of a gender perspective will be disappointed. During the course of the Manchester Colloquium held to consider the PIP project's preliminary proposals on how best to integrate mainstreaming this issue was discussed. It was heartening to discover that in countries such as the Netherlands, where substantial progress had been made in pursuing gender impact assessment, there had been the same pressure for "idiot-proof" tests. The representative from the Netherlands, Mieke Verloo, who spoke at the Manchester Colloquium and also contributed to the project book had the following comments to make on this issue:

> Some of the discussion partners at the Ministry would have preferred an instrument that was idiot-proof, that needed no expertise at all and could be applied in less than one day. The problem was how to combine that "wish" with a reality where gender relations are very complex and any gender impact assessment would necessarily need a certain degree of sophistication.

Mieke Verloo warned against the temptation to reduce gender impact assessment to a set of questions or a checklist. Experience has shown that simplification can mean that

> … the gender perspective is easily lost, leading to "sex without gender" evaluations which often revert to representations of women only as vulnerable victims.

The partners in the PIP project believe that if mainstreaming is to work and work well the issues outlined in its model must be taken into account. However the way in which these issues are addressed and any conclusions reached must depend on the political culture and institutional landscape of specific states. Once again experience in the Netherlands with their gender assessment instrument proved this point.

> … the EER [Emancipation Impact Assessment] is not easily exportable. Not because of its qualities in an academic sense, but because of its qualities linking it to policy and political contexts, the qualities which make it accepted and used.
> (Verloo, 2000)

If the PIP project has demonstrated one factor above all others it is how states adapt concepts to their own particular context. If this reality is ignored and states are given specific instructions on what they must or must not do then the potential of mainstreaming to secure change may be severely limited if not completely neutralised. There is good evidence that attempts to give effect to Community norms have been adversely affected by a lack of "fit" between what the Community norm requires and the policy environment into which it is introduced (Maher, 1998).

The recognition of this need for fit has two very important consequences so far as the PIP project is concerned. One has already been mentioned, namely that any mainstreaming model should be specific enough to identify the issues which states have to take into account without imposing inflexible demands which states would find it difficult, or perhaps impossible, to accommodate. An inflexible model is a recipe for a mainstreaming process that does not work effectively. Instead states must feel that mainstreaming is a process of which they have ownership and which they can adapt to their specific needs. Resisting the need to supply ready made solutions may also enable the women's movement in specific states to engage more constructively and more meaningfully with mainstreaming.

The second of these issues is an appreciation of how best to accommodate mainstreaming within an already complex array of equal opportunities strategies. Mainstreaming is a relatively recent or so-called "third generation" strategy to promote equal opportunities. Campaigners for equality between the sexes initially set their sights on securing equal rights for women. Whilst women's struggle for legal equality with men was not easily won, once it was achieved it very quickly became apparent how restricted this notion of equality was. It may have secured civil and political rights for women but did not tackle either the preconceptions surrounding women and their role in society or the deliberate prejudice and discrimination they experienced. Those early women's movements with their demands for equal rights for women have, however, had a considerable influence on subsequent campaigns for equality. They have given a spurious importance to the notion of individual rights and an inflated view of what rights can achieve. As was demonstrated in section three, individual rights secure change only when it is possible to enforce those rights. The language of rights tends to be open-textured and often requires judicial interpretation. This gives the officials or judges who are charged with this task the opportunity to limit who can benefit from those rights. Finally it is not

uncommon for one set of rights to conflict with another or to be valued more highly.

Faced with the discovery that to be the recipient of rights is no immediate antidote to centuries of prejudice, campaigners for equality shifted their attention to tackling these prejudices. In most instances their chosen strategy was to secure legislation outlawing discrimination on the grounds of sex. As was demonstrated in section three, anti-discrimination legislation has a host of problems associated with it, most particularly the fact that its definition of equality is based on equal treatment.

The problem with defining equality as equal treatment, as is the case with the concepts of direct and indirect discrimination, is that it forces women to adhere to male standards and many find it difficult or impossible to do so. In addition the notion of equal treatment is regarded as an inappropriate standard to be applied to certain aspects of human behaviour. This is particularly true of the so-called private sphere of the family. Within the family, relationships, so it was thought, should be organised on a basis of love, mutual respect and sharing, as opposed to law. The law was simply to be concerned with regulating the initiation and dissolution of family relationships. The state, whilst it might offer "incentives" such as tax concessions to encourage the formation of family relationships, such as marriage, scarcely ever intervened in those relationships once they were formed and might not even recognise the desire of one (or both) of the parties to dissolve a marriage. The reluctance of the state to regulate the private sphere of the family has been eroded by the exposure of such phenomena as domestic violence and child abuse. This has come too late, however, to save the concepts of equality and equal treatment from being principally, if not exclusively, concerned with the public sphere of the workplace and the marketplace. The difficulty with this is that the inequalities still practised in the private sphere of the family adversely affect the ability of equality as equal treatment to eliminate inequalities between the sexes.

> [T]he weakness of the equal treatment approach lies in a lack of analysis of the relationship between public and private spheres. In effect, public life is ring-fenced as if it were unaffected by inequalities in the arena of private life. …Granting equal access to men and women will only benefit certain women: those whose cultural capital, experiences family circumstances and share of domestic responsibilities are similar to those of men as a group.
> (Rees, 1998: 29)

Equality as equal treatment cannot deal with the disadvantages, both biological and cultural, which some women experience and most men do not.

> For a long time – and it is often still the case – gender equality in Europe

> was defined as giving girls and boys, women and men, *de jure* equal rights, equal opportunities, equal conditions and equal treatment in all fields of life and in all spheres of society. Nowadays, it is recognised that equality *de jure* does not automatically lead to equality *de facto*. It is important to understand that men's and women's living conditions are very different – to some degree because of the childbearing function of women. The main point is not the mere existence of such differences, but the fact that these differences should not have a negative impact on the living conditions of both women and men, should not discriminate against them and should contribute to an equal sharing of power in economy, society and policy-making processes. Gender equality is not synonymous with sameness, with establishing men, their life style and conditions as the norm.
> (Commission of the European Communities, 1996: 4)

If the pursuit of equality means devising some way of accommodating or even celebrating or valuing difference rather than penalising it, then the question is – how? The answer has been to promote alternative (second generation) equality strategies which focus specifically on women. Family-friendly policies and positive action/discrimination have for some time been used to secure women's presence in areas of society where previously they have been under-represented. There are, however, problems associated with these strategies not least of which is the conflict that can occur between them and the notion of equality as equal treatment. In the states examined in this project there was a marked reluctance to make positive discrimination/action a requirement: usually where it was permitted it was on a voluntary basis, i.e. employers could resort to such practices but were not required to do so. Only in Sweden were employers under a positive obligation to attempt to achieve balanced representation of the sexes in the workforce and to tackle gender divisions within it.

Family-friendly or woman-friendly policies that acknowledge the role which caring responsibilities play in perpetuating gender inequality have been the subject of recent policy initiatives in relation, for instance, to pregnant workers and parental leave. Legislators have, however, been unwilling to guarantee high levels of protection, perceiving it to be inappropriate to impose the 'costs' of addressing inequality on employers.

Second generation equality strategies are heavily market-focused, that is to say that equality is promoted where women participate in the market as employees or sometimes consumers but is not pursued into the domestic or 'private' sphere. Thus whilst it is now accepted that the disadvantages faced by employees who are parents vis-à-vis other employees are a legitimate subject of concern, the fate of those excluded from the workforce by reason of caring responsibilities falls outside the scope of first and second generation equality strategies. This fact forms the background against which a third generation

equality strategy, mainstreaming, has developed.

Mainstreaming has its origins in the work of the United Nations to promote development in the Third World. It is an innovative strategy that aims is to promote equality by insisting that the interests of women and the elimination of gender inequality are addressed in the process of law and policy-making. Its major contribution to the promotion of equality between the sexes is the recognition that the pursuit of equality policies in the employment field may be less significant than the gender impact of policies in other fields such as health or transport. It seems to sit well with feminist understanding of the nature of oppression since it can focus on how the impact of laws and policies is affected by the social construction of men's and women's roles in society (gender). In addition the effect of mainstreaming is not limited to the workplace. Neither is mainstreaming limited to those areas amenable to change through law or legal processes. It is a far-reaching strategy that evaluates the gender impact of laws and policies in both public and private spheres.

Clearly, therefore, mainstreaming has considerable potential as an instrument for securing substantive change. If, however, this strategy is to succeed, close attention has to be paid to the "fit" between mainstreaming and a state's existing equal opportunities strategies. In the first place there needs to be a clarification of the exact meaning of the term. The point has already been made in section three that the terms "mainstreaming" and "gender impact assessment" are often used as if they were identical when this is not the case. Mainstreaming is a strategy for promoting equal opportunities whilst gender impact assessment refers to a particular type of tool or mechanism which may be used to implement the strategy. Some of the states involved in the PIP project did possess a gender assessment tool or some form of equality proofing which they were content to refer to as mainstreaming. In others there was no mainstreaming tool, simply a policy statement committing the state in question to mainstream gender. If the mainstreaming label is attached to a process which simply represents one aspect of that strategy or is not backed with the appropriate tools, then the expectations of what mainstreaming can achieve are likely to be thwarted.

States also need to be clear on what the object of mainstreaming is and how they will go about achieving it. Since the target of many equality strategies is the elimination of sex discrimination mainstreaming may be targeted at sex discrimination rather than at the determination of adverse gender impact. In the United Kingdom, for example, there was evidence that PAET and PAFT were used initially to identify sex discrimination as defined in the relevant anti-discrimination legislation. This severely restricted what PAFT and PAET could achieve. It occurred because of the attempt to ensure that there was a fit between sex discrimination and mainstreaming.

There also appear to be a variety of ways in which a state can employ a gender

impact assessment mechanism. On the one hand there is the expert approach. This sees gender impact assessment as a task involving specialised knowledge and training as well as a sophisticated understanding of gender relations. It is, therefore, a task requiring gender expertise. There was limited evidence of this approach among the PIP states. Sweden's Directive 1994:124 involved the use of experts. Directive 1994:124 requires that the investigations which precede policy-making and legislation should contain an analysis and a report on the consequences of the suggested policy from the perspective of gender and its impact on equal opportunities (Gillberg, 1999: 41). The Swedish government had appointed an expert on gender issues who supported government Ministers in their handling of mainstreaming. The expert provided advice on statistics, training courses and checklists and evaluation systems. Hence the expert's role was a limited one. At a regional level, however, gender expertise seems to have a much greater role to play. In 1995 the Swedish Association of Local Authorities appointed a Municipalities and Equal Opportunities Committee. The principal aims of the Committee were:

- To develop methods so that all questions and issues where the Swedish Association of Local Authorities acts as a player, can be analysed from an equal opportunities view.
- To support a selected number of projects working within this area (of method development).
  (Gillberg, 1999: 43)

As a result of the efforts of this Committee a project known as JAMKOM has been initiated which is intended to mainstream equal opportunities among the inhabitants of the municipalities. In order to do this use is made of the "3R-method" which is based on knowledge gathered from gender research. The procedure considers how men and women are represented, in terms of membership of and contact with, on local government boards, how resources, in terms of time, money and space, are distributed. From these quantitative variables, it is possible to make a qualitative assessment of the goods, services and situations which result and the needs which are being served.

Another frequently encountered attitude to gender impact assessment was that it was a bureaucratic task which should be performed by civil servants or administrators rather than gender experts. This was the situation in the United Kingdom and Ireland. The problem with this was that civil servants were unlikely to possess a sophisticated understanding of gender and what exactly was the purpose of a gender impact assessment. In the United Kingdom this led to reliance being placed on anecdotal evidence or general impressions as well as to the association of adverse impact with the legal definition of sex discrimination.

In the course of the PIP project, however, the relevance of involving gender experts, administrators and indeed politicians (the expert bureaucratic

approach) in gender impact assessment was emphasised. In the context of Sweden's JAMKOM project it was said to be important that "individuals in key positions become involved in the process of driving forward equality issues at local level" (Gillberg, 1999: 44).

An evaluation of the use of Emancipation Impact Assessment [EER] in the Netherlands also emphasised the importance of co-operation between gender experts and officials.

> [The report] concluded that "joint venture" teams worked best, combining the advantages of distance (the external experts) and the power to define policy (the internal policy-makers).
> (Verloo, 2000)

Indeed involving experts and officials would seem sensible since gender impact assessment is not a process carried out in isolation but as part of the policy-making process. Therefore, if the decision is taken to exclude policy-makers and simply to present them with a finding, then there is the risk that the "fit" that is essential between mainstreaming and the policy-making landscape may be missing. Instead, gender impact assessment runs the risk of becoming an isolated process which administrators may treat as alien or unimportant since they have no connection with it.

The alternative to the expert/bureaucrat mix is a participatory/democratic approach. This involves a range of individuals and organisations such as community groups, service recipients and service providers, as well as more organised interest groups such as employers, trade unions and political groupings contributing to gender impact assessment. Under this approach consultation, access to policy-making and possibly, the devolution of decision-making are valued.

Once again there was little evidence from the research undertaken for the PIP project of this approach being used. Indeed a quite contrary practice seemed to prevail. In Ireland consultation with outside agencies was said not to be a requirement nor was it a practice. In the United Kingdom the PAET guidelines listed organisations which might be consulted in the course of an appraisal, but there was no evidence on whether this guidance was ever acted upon.

This analysis of the methods whereby a gender impact analysis might be conducted raises a related point regarding the relationship between gender and "other inequalities" such as race, ethnicity or disability. The expert-bureaucratic approach indicates that these "other inequalities" need to be tackled separately using distinct and discrete procedures, since it is necessary to start with a firm expert understanding of the pathology of the inequality in question. This was certainly the view expressed at the Manchester Colloquium by the contributor from the Netherlands where an expert-bureaucratic approach

to gender impact assessment is employed.

> In the Netherlands, the EER has been designed to point at the most important structures, mechanisms and criteria concerning gender. There is no reason to believe that exactly the same structures, mechanisms and criteria are the right ones when other structural inequalities are concerned. To give but a few examples: there are legal equal rights for both genders, but not for heterosexuals and homosexuals. The "organisation of intimacy" can be analysed as a fundamental structure for gender inequality, but why should that be one of the structures of racial/ethnic inequality? People can escape some elements of homophobia and discrimination on the basis of sexuality by hiding in the closet, but people cannot escape racism and sexism in the same way, it is too hard to hide sex or colour. Therefore the analytical elements that are important for other structural inequalities should be established before designing a diversity impact assessment or any other mainstreaming strategy that can incorporate those inequalities.

The participatory-democratic approach indicates the opposite. It works on the basis that as a starting point it is necessary to validate and value the experience of individuals affected in different ways by the policies in question; the empowerment of all members of society is an inherent goal. If this is carried over into the policies which emerge from that process, there might be said to be an inherent value in policies which enhance personal autonomy (in a real rather than a formal sense, that is construed in a way that takes account of the real attachments and ties and situations of a range of individuals, rather than in a liberal rational detached individualist mode. It also validates the joining of different inequalities in the policy-making process, through the introduction of cross-cutting target definitions such as "poverty", "social exclusion" and "social need".

These two approaches are not necessarily mutually exclusive within any given policy-making arena but experience to date shows that governments have been persuaded to focus on one or the other, rather than to seek to benefit from both approaches. It remains to be seen how they can be fitted together and their apparently conflicting values reconciled.

Whilst mainstreaming may be a strategy with considerable potential that potential should not be overstated. In the first place mainstreaming is a strategy which works in the political arena and predicts the gender impact of proposed laws and policies. There is nothing to say that the laws and policies which are mainstreamed work to women's advantage. Although mainstreaming will disclose an adverse gender impact the process does not oblige the government to change the policy or law in question. That is a matter of political judgement. In addition some of the factors which affect women most, for example the way in which the workplace is organised, are not automatically included within the

mainstreaming process. There have been some initiatives to "mainstream" personnel policy in the public and the private sector, but to date this has been an ad hoc rather than a co-ordinated exercise.

Another risk that mainstreaming carries is that its existence may be used as an excuse to eliminate other equal opportunities strategies. For example it may be argued that there is no need to have positive action initiatives once gender is everyone's business. The PIP project found no evidence that this was happening at state level. Although in those states which used equality proofing to target not only gender but other specific groups such as the disabled or ethnic minorities, there was a tendency to combine equality agencies. For example in Northern Ireland an Equality Commission replaced a number of discrete equality agencies including the Northern Ireland Equal Opportunities Commission. The same trend could also be discerned at EU level where it was proposed that the status of the European Parliament's Women's Rights Committee be altered "in the name of mainstreaming" and its name changed to the Human Rights Committee.

Mainstreaming may also be a strategy that is susceptible to economic pressures. In this era of globalisation it is possible that states will continue to pursue policies with an adverse gender impact on the basis that the policy is economically sound or it will protect jobs. It does appear, however, that the fact that mainstreaming is a strategy which can operate without the need for laws to back it makes it less susceptible to economic pressure than those social policy initiatives which require positive implementation.

4.2 The interaction between the European Union and Member States in promoting equality

Mainstreaming is clearly an equality strategy with certain advantages when compared with alternative equality strategies. If states are prepared to integrate mainstreaming into their policy-making process whilst at the same time strengthening other mechanisms to promote equal opportunities then this will give their efforts to eliminate inequality between the sexes a wholeness which it would otherwise lack without a mainstreaming policy. There was considerable debate at the Manchester Colloquium on how best to ensure that states do adopt a meaningful mainstreaming strategy. Clearly the PIP project is designed to offer guidance to states on those issues which have to be addressed if mainstreaming is to succeed. How they choose to act on those guidelines depends on the legal, political and institutional landscape of the state in question. A great deal of interest was expressed at the Manchester Colloquium regarding the initiative being taken in Northern Ireland to make the need to mainstream a legal obligation. The use of the law to promote an equality strategy is characteristic of the United Kingdom's approach to such issues. Clearly it carries dangers with it such as the "judicialisation" of mainstreaming.

In the past constructive equal opportunities initiatives have in effect been neutralised once they have been made legally obligatory. Yet despite the possible disadvantages associated with what is happening in Northern Ireland, it does represent an attempt to make mainstreaming work.

This example from the United Kingdom raised a more general policy issue, namely whether states should be free to promote mainstreaming as they thought fit or whether there was a need for the European Union to assume a co-ordinating role. In order to answer this question it is necessary to explore the evidence which emerged during the course of the PIP project concerning the interaction between the EU and the partner states.

EC law can be seen to have played a significant role in each of the Member States participating in the PIP project. However it is not the only influence - most of those states had some form of commitment to equality before their accession to the EU, and all have furthered their commitment to equality in areas outside the competence of the EU as well as within it. For example, in Sweden laws to promote equality relate not only the workplace but also to violence against women and the regulation of the family (Gillberg, 1999: 31-37). Portugal was another example where gender equality laws included measures to tackle violence against women (Casqueira Cardoso, 1999: 40).

Moreover all the partner states subscribed to international instruments such as ILO Conventions on *inter alia* Equal Pay and Discrimination in Employment and to the UN Convention on the Elimination of all forms of Discrimination Against Women (CEDAW). Thus at both the political and the legal level there is in each of the partner states a wide range of ideas, concepts and strategies concerning equality.

Alongside this it is clear that each state is heavily influenced in its approach to equality matters by its existing legal and political culture and institutional arrangements. For instance, those states which traditionally left the regulation of employment matters to the social partners - labour and management - usually left matters concerning equality in the employment sphere to be addressed through the collective bargaining process. Indeed, in the case of Sweden, bad feeling emerged between the labour movement and the ruling Social Democratic Party when the government proposed the introduction of equal opportunities legislation in 1978/79 (Gillberg, 1999: 21). In contrast states which typically left the employment relationship to be regulated through the medium of private contract addressed issues concerning equality in the employment sphere by enacting legislation which imposed new parameters on the freedom of these parties to contract.

It should also be borne in mind that the Member States and the EU are not mutually exclusive bodies - the development of ideas, policies, legislation and jurisprudence at the EU level comes about as a result of myriad forms of

interaction between the political representatives, the officials, the populace and the cultures of the Member States and the EU institutions. Among the PIP partners the United Kingdom and Ireland have been the source of many references to the ECJ on equality issues. Hence those states have, in a somewhat unwitting sense, acted as the drivers of the development of the law by the ECJ. Other PIP states may have influenced the setting of higher standards of protection in Community legislation and through EU policies in keeping with their own national perspectives and policies, though such an assertion is admittedly difficult to verify.

EU laws and policies are therefore as much influenced by the laws, policies and cultures of the Member States as national laws and policies are a product of EU laws and policies, though the precise equation is ever-variable, and perceived differently by different actors at different times. Given this situation it is not an easy task to be precise over the role and influence of EU law in any of the PIP states. Yet without some notion of the extent to which the EU has influenced national practice in promoting equal opportunities, it is impossible to come to any conclusions on what the EU's role should be in seeking to promote best practice in relation to mainstreaming.

Influence of the EU in the partner states

It is usually assumed that the EU has played a very positive role in promoting equal opportunities. The case studies which were a feature of the PIP project, as well as the country reports, were a source of data on the precise influence of the EU's equal opportunities initiatives. In discussing what conclusions emerged a distinction needs to be drawn between the EU's hard and soft law measures. Hard law refers to those EU measures, such as regulations and directives, which are legally binding on Member States. By way of contrast EU soft law measures, which include recommendations and codes of conduct, have no, or at most a very limited, legal impact (Beveridge and Nott, 1998).

Hard law equal opportunities initiatives

EU hard law measures have fulfilled a number of roles in the Member States participating in the PIP project; they have, however, not performed the same function in each state. Thus in the analysis of the relationship between national and EU law that follows it should be remembered that this relationship, and the way in which it is perceived, varied among the different partner states.

In the first place EU law had influenced the content of national laws seeking to eliminate sex discrimination and promote equal opportunities. In the United Kingdom, Ireland, Portugal, Sweden and Spain steps had been taken to align their national laws with EU law. The extent of the change, however, varied from state to state. In Sweden it appeared very few changes were needed in order to bring its law into line with EU law (Gillberg, 1999: 21). In Spain a

greater degree of legislative activity was required in order to align the two systems (Arranz, Quintanilla and Velázquez, 1999: 16-20). In addition it seemed that in some of the PIP states the attempts to transpose EU law into national law had not been wholly successful. This was the case in Spain where it was felt that the Spanish regulations on the equal treatment of men and women regarding access to employment and promotion fell short of what was required by EU law (Arranz, Quintanilla and Velázquez, 1999: 17). The Spanish country report also drew attention to the delays that often occurred in transposing EU law. It was pointed out that although Spain joined the EU in 1986 it was not until 1994 that article 28 of the Spanish Workers Statute was changed in order to permit women to claim equal pay on the basis that they were performing work of equal value to that performed by a man (Arranz, Quintanilla and Velázquez, 1999: 17).

Particular problems in transposing EU law into national law were experienced in those PIP states with a common law tradition, that is Ireland and the United Kingdom. To what extent this is attributable to the common law's requirements of certainty and predictability, and to what extent political factors are at work, is not clear. However, the need to detail the rights and obligations of, for instance, employers and employees, has caused problems on numerous occasions.

For instance, both the United Kingdom's Equal Pay Act 1970 and the Irish Equal Pay Act 1974 used the concept of a "comparator", compared to whom the claimant's treatment had to be shown to be less favourable to prove discrimination. The comparator had to be in the same employment and the sex of the claimant had to shown to be the causal element in the discrimination. In the case of the United Kingdom it was established in the legislation that this did not admit of a hypothetical comparator, nor of a comparator employed during a different period (e.g. immediately before or after the claimant). Irish law, on the other hand, required an actual comparator in relation to direct discrimination relating to pay, though a hypothetical comparator could be used in relation to indirect discrimination and discrimination on the basis of marital status which was covered by different legislative provisions.

Similar complexities were apparent in both systems in relation to the concept of indirect discrimination. In the United Kingdom it is necessary to show that the proportion of women who can comply with the requirement or condition in question is considerably smaller than the proportion of men who can comply; that the person applying the condition cannot justify it irrespective of the sex of the person to whom it is applied and that it is to a women's detriment because she cannot comply with it (Beveridge, Nott and Stephen, 1999: 39). Similarly, in Ireland the relevant legislation laid down that indirect discrimination would be established where it could be shown that a condition had been imposed (for example on recruitment) which was not an "essential requirement" of the job and with which a "substantially higher" proportion of one sex than the other

was able to comply.

The approach of specifying such matters in detail within the primary legislation, though an integral feature of the constitutional and legal systems in these states, produced both negative and positive effects. The detailing of the precise requirements of equality provisions has led to unhelpful (narrow) definitions, particularly where the courts have been called upon to give interpretations. The complexity of legal provisions has also made enforcement difficult at times from the point of view of employees, employers and the relevant statutory bodies. And the laws themselves have had to be amended repeatedly to bring national law in line with ECJ rulings. There have also been many periods where substantial uncertainty has existed, particularly where the scope of ECJ rulings has been left unclear. Thus a feature which is a characteristic of the common law tradition and is justified as promoting clarity and predictability has often had the opposite effect.

The problem is compounded if and when EU law allows exceptions or justifications to general principles to be made. In Ireland and the United Kingdom, national legislators have sought to flesh out these justifications in order to give them the detail and appearance of legal certainty which is a feature of the Anglo-American common law tradition. As a result these provisions have become the subject of protracted and confusing rounds of litigation. The very existence of the possibility of justification undermines the effectiveness of the law as a tool for tackling inequality (Fredman, 1992: 125). Contrasts can be drawn with the framework law system in Sweden, where only the general principles will be established in primary legislation, leaving the details to be developed through administrative practice and detailed regulation.

EU law had also been instrumental in establishing a minimum floor of protection in areas of particular concern to women, such as the treatment of pregnant workers and the provision of parental leave. In theory at least this deprived employers of arguments against the basic entitlements established by the EC measures based on costs and competitiveness with other EC-based firms. Similarly governments were obliged to accept the minimum entitlements established as an irreducible core of social protection. However, it must be borne in mind that the intention behind the pertinent Directives was merely to establish minimum standards and that in real terms the level of protection provided, particularly in relation to pregnant workers, was not high. Indeed there was a danger that some employers would level down the protection they previously offered to women workers to the minimum required under the new provisions, where national legislation permitted this. Another danger was that Member State governments would abandon attempts to maintain higher standards, either generally or in the public employment sector, effectively treating the minimum as a norm, though in some instances this was ruled out by EU law. For example, Article 1(3) of the Pregnant Workers Directive[x] provided for the protection of higher levels of maternity pay than required by

the Directive, where these were stipulated by pre-existing state law.

The states involved in the PIP project had, in general, taken steps, where this was necessary, to ensure that their laws offered this minimum level of protection to women. The United Kingdom, for example, implemented the Pregnant Workers Directive (Directive 92/85) in the Employment Rights Act 1996 whilst in Ireland the Parental Leave Directive (Directive 96/34) was given the force of law in the Parental Leave Act 1998. In both cases the states stuck rigidly to what the Directives required and made no attempt to offer higher levels of protection. As a consequence, doubts were raised regarding the helpfulness of such measures to women.

> The Parental Leave Act is a disappointing transposition of Directive 96/34/EEC. It takes full advantage of the optional provisions of the Directive, resulting in only threadbare rights to parents. The unpaid provisions, it is submitted will do little to encourage more fathers to become actively involved in caring for their children… The benefits of this legislation will, in practice, only accrue to parents in higher income brackets who can afford to avail of unpaid leave. Low-paid families and lone parents (mostly women) will be unable to utilise the right to parental leave due to the inordinate financial burden associated with unpaid absence from the labour force.
> (Donnelly, Mullally and Smith, 1999: 41)

There was also evidence in the country reports of governments refusing to implement these minimum rights in their entirety if a particular provision was regarded as unduly onerous. In Spain some provisions in the Pregnant Workers Directive designed to secure a pregnant worker's health and safety were not implemented. More specifically the right of a pregnant worker to stop working whilst still continuing to be paid if her health and safety is threatened by a risk that cannot be eliminated and she cannot be offered alternative employment, is not recognised (Arranz, Quintanilla and Velázquez, 1999: 19).

In those PIP states where litigation played a prominent role, such as in the United Kingdom and Ireland, EU law could fulfil a quasi-constitutional function by being used to challenge the legality of national legislation. The use of this strategy was particularly marked in the UK where the Equal Opportunities Commission, which was out of favour with the Conservative government between 1979 and 1997, was nevertheless able to adopt a litigation policy to expose flaws in the existing United Kingdom equality legislation. As a result of the references made to the ECJ in the course of this litigation, key concepts such as the term "pay" employed in Article 119 were widened to include elements such as occupational pensions and redundancy pay. Whilst the concept of indirect discrimination, previously non-existent or underdeveloped in many Member States, was given a broad and effective interpretation permitting many forms of systematic discrimination in which

gender played an important part to be tackled.

EU law also made a notable contribution in ensuring that the domestic laws of the Member States provided adequate remedies for breaches of sex equality law. Arguably this is an area where there has been a spillover into the equality field from an agenda which has been played out on another plane - the ECJ's quest to establish the supremacy of EU law over national law. Equality cases have been an important means of shaping EU obligations more generally. In cases such as *Von Colson*[xi] and *Marshall (No. 2)*[xii], both involving Article 6 of the Equal Treatment Directive, the Court acknowledged the discretion which the provision gave to Member States in relation to the development of a system for effective implementation of the equal treatment principle, but insisted that Article 6 required that the victims of discrimination be able to seek full redress through a judicial process and that full redress would, for instance, include interest on sums due. The impact of higher normative and procedural standards in relation to remedies is clearly seen in those partner states where individual litigation is favoured in the employment sphere.

A contrast needs, however, to be drawn between those partner states where litigation was used to make gains and other partners, such as Portugal and Sweden, where great faith was placed on collective bargaining between the social partners to implement broad general expressions of the right to equal pay and equal treatment. In Sweden, there was less "rights talk" all together in relation to equality, and this was reflected in the more consensus-oriented grievance procedures. In addition there was less emphasis on giving effect to EU law which was largely regarded as irrelevant in the Swedish context, in favour of "active" measures to promote equality in the workplace established in the Equal Opportunities Act of 1992 (Gillberg, 1999: 23). Whilst in these states the possibility of individual litigation does exist, there is no regular resort to national courts to test the legality of current employment practices against the demands of EU law. It is difficult in this context to be certain whether EC law is fully respected in the labour market, particularly where collective agreements reflect and perpetuate vertical or horizontal segregation. Moreover it is unclear whether the requirement of an adequate remedy for breach of the non-discrimination requirement is met in these cases, again because the point has not been tested.

There were at times tensions between EU law, its interpretation and particular partner states. In a general sense, the teleological reasoning of the ECJ, by upsetting commonly-held perceptions of what existing legal obligations might entail, is problematic in any system of law, and indeed this is indirectly recognised by the ECJ when it resorts to, or considers, prospective overruling. But beyond that, the requirements of EU Directives were regarded as thwarting the efforts of some partner states to promote equal opportunities between the sexes. Sweden, for example, criticised the EU regulations on public procurement as not permitting a supplier's record on promoting gender equality

to be taken into account.

Soft law equal opportunities initiatives

The country reports prepared as part of the PIP project indicate that the pattern of responses to soft law measures among the partner states is extremely variable. Whilst the partner states were aware of the existence of such measures, there appeared to be no specific allocation of responsibility to a particular Ministry to consider how best to react to the issues raised in recommendations or codes of practice or to prescribe any form of response, still less its shape or content. The extent to which a soft law measure was implemented appeared to depend on a variety of factors. These included its topicality that is whether it dealt with an issue which for some reason had assumed a high profile within the partner state and the willingness of an agency (government or non-government) to take an interest in the measure. Another relevant factor was the extent to which the partner state had an established policy on the issue in question. If the issue had already been dealt with by the partner state then an initiative by the EU in the form of a soft law measure was unlikely to upset the status quo.

One of the PIP case studies looked specifically at the reaction in the partner states to an EU soft law measure, the European Commission's Recommendation and Code of Practice on protecting the dignity of women and men at work. This initiative was designed to combat sexual harassment in the workplace. It was apparent from the case studies that the responses of the partner states varied widely. In Portugal there was a belief that the existing Portuguese legal framework was within the spirit of the EU initiative and, therefore, the Recommendation was ignored in favour of an established "dignity at work" approach which had its roots in ILO instruments. In Spain the Recommendation and Code of Practice were referred to as

> a first point of reference when dealing with this subject by internal regulation and collective agreements.
> (Arranz, Quintanilla and Velázquez, 1999: 21)

What was definite, however, was the extent to which a partner state's response to soft law initiatives was coloured by the method which they used to effect change in the labour market. Partner states either used the law and formal legal rights or collective bargaining to secure change. Whichever approach was used - free market or social market - its influence was evident throughout the system, for instance in the negotiation of legislation and policy more generally and in the resolution of disputes. The response to sexual harassment in the workplace was also shaped by this framework.

Sexual harassment does not easily fit into the "free market" paradigm. It has been "accommodated" only by treating sexual harassment as sex discrimination

or as the cause of constructive dismissal i.e. by reading a contractual meaning onto what is patently not in essence a contractual matter. However, in Ireland problems have been encountered in establishing the responsibility of an employer for acts carried out by an employee, since in perpetrating such acts the employee has clearly been acting outside the course of his employment (Donnelly, Mullally and Smith, 1999: 38-40). Similarly, in the United Kingdom an employer can escape such liability by demonstrating that the actions in question were not done in the course of employment, or that he took reasonably practicable steps to "prevent the employee from doing that act, or from doing in the course of his employment acts of that description" (Beveridge, Nott and Stephen, 1999: 45). Beyond this, the criminal or civil law might be used, but this is seen as taking the matter outside the employment context, though the employer may choose to ensure that consequences follow for employees found guilty of a criminal offence.

In states where a social market approach was followed, it was common to tackle the problem of sexual harassment through the "dignity at work" approach developed and favoured by the ILO, under which the situation of the worker as a human being working in an atmosphere created and maintained by the employer is central. Under this model, sexual harassment at work can readily be conceptualised as falling within the responsibility of the employer and as a matter therefore to be regulated through agreement with the social partners. For example, under Portuguese law employers are duty-bound to apply disciplinary sanctions (including the possibility of dismissal) to employees who have provoked or created a risk of demoralising their colleagues, especially women and minors. Employees who are the victims of offences against their physical integrity, freedom, honour or dignity perpetrated by colleagues are regarded as having "just cause" for the termination of their employment contracts and a claim for compensation equivalent to redundancy (Casqueira Cardoso, 1999: 37-38). Under Spanish law the worker is entitled to respect for his privacy and due consideration of his dignity, including protection against verbal or physical offences of a sexual nature (Arranz, Quintanilla and Velázquez, 1999: 20).

What this demonstrates is that EU soft law initiatives carry with them certain dangers. Briefly stated they are the risk that states will ignore them or will "implement" them in accordance with the state's current thinking on that issue. In the case of the latter response this can mean that the policy underlying the soft measure is not fully acted upon.

The diversity of national responses

It is very noticeable that the equality laws and policies of the states participating in the PIP project were, even when responding to or anticipating legal change at the EU level, heavily influenced by national political, legal and institutional cultures. Thus despite superficial similarities at times between the

instruments enacted to give effect to EU measures, these measures varied enormously in terms of their normative content, the methods by which they would be acted upon and implemented and their overall effectiveness in bringing about the changes in practice which the EU measure was designed to secure.

The key question is whether this diversity between partner states' equality laws and policies matters. Legal pluralism - in this case referring to the co-existence of substantially different rules in different states - may be a virtue. In the first place, legal rules aimed at the furtherance of a shared goal such as gender equality may work more effectively where there is a good policy "fit" with existing policy structures. Verloo, for instance, demonstrates that the Dutch gender impact assessment measure (EER) built on and fitted in with existing Dutch understandings about the causes of gender inequality. She argues that a more simplistic approach was appropriate in Flanders where officials would be starting from a much lower base in terms of understandings and familiarity with gender issues (Verloo and Roggeband, 1996). Thus whereas the intellectual fiction of "equality" may be capable of being addressed and developed at the somewhat abstract and remote level of EU law-making, real inequalities may be better tackled through diverse, differentiated and localised strategies.

> There can be no single meaning of sex equality, because there is no single determination of women, as of course there is not of men... The first duty of the feminist legal thinker is not to pronounce on sex equality, or perceived inadequate approximations to it, but radically to destabilise any pretended determination of the idea, in practice or in reality.
> (Ward, 1999: 372).

Legal pluralism can also be presented as more democratic than legal unity or homogeneity, in that it permits locally-made choices and preferences to determine the shape and content of norms. Here pluralism is presented as a facet of subsidiarity, which in turn is an element of democracy. Soft law, which appears to enhance (or preserve) the scope for diversity among Member States, has been positively endorsed in this context by the Member States themselves (Edinburgh European Council, 1992; Beveridge and Nott, 1998: 294-5).

But these observations raise questions about the objectives of EU equality laws and policies. By its own description EU law privileges equality norms as fundamental and of central importance. EU law establishes certain "core" values in relation to equality but the precise shape given to these depends on the social and political context in the Member State in question and on the methods chosen for implementation. The diversity between the laws of different Member States would be acceptable if it merely reflected some hierarchy of "core" and "penumbra" of equality norms. But many would deny that a fundamental norm should permit of such diversity. In this connection it

is noteworthy that the ECJ has extended the "harmonisation" of equality laws beyond the substance of these norms, to matters concerning their enforceability and remedies, indicating arguable that the ECJ does not accept such a distinction. In support of the view that such a distinction is unacceptable, it can be observed that a significant factor producing diversity between Member States' responses to EU equality measures is the role played by powerful interest groups in the policy-making processes in different states.

Legal pluralism is also questionable if the legitimacy of EU equality law is seen to rest on the harmonisation and uniformity of Member States' equality laws. It would be wrong to conclude from the developments on equality law in the Treaty of Amsterdam that debates over the legitimacy and the role of the EU in relation to equality, or in relation to social law more generally, can be laid to rest. Recognising that the entrenched opposition of the UK to the further development of EU social policy may have allowed other Member States to engage in a great deal of "cheap talk" (Lange, 1992), the removal of that opposition can be anticipated to give rise to a degree of reticence and caution on the part of some Member States. Indeed under EMU many Member States will be obliged to keep a close eye on monetary and fiscal disciplines, and will perceive this to be intrinsically opposed to further developments in the social field.

In addition political support for future developments in EU equality law might dissipate if the issue of diversity, or differential impact, rose to prominence. Whilst it seems unlikely that equality policies would ever produce the sort of legal and political battle which has been fought in relation to the safety of beef and beef products, that dispute is a salutary reminder of the importance of even-handedness in the enforcement of Community law, and of the political importance of an underlying notion of reciprocity in Member State obligations. Transforming the narrative of social policy from a market to a citizenship based notion is unlikely to have much impact at the state level, at which such matters are raised.

Mainstreaming: the EU's role

The EU has been an important driver of equality laws and policies within the Member States but the results are very variable, a direct impact being evident in some states and virtually no impact being visible in others. In accordance with its "constitution" the EU is able to exert its influence in only certain fields, though its area of competence in relation to women has expanded significantly through successive Treaty amendments. The EU has, therefore, focused its attention to date predominantly on the "core" economic area of the labour market.

The question of enforcement of EU equality rights has raised particular

problems. The ECJ has nailed its colours firmly to the mast in requiring individual recompense for breaches of rights flowing from EU obligations and in requiring full and effective remedies. However in the equality sphere this serves to draw a line between states where the individualistic and litigation-centred approach has figured historically in labour market relations, and those where it has not. In the latter group (Sweden, Portugal and, to an extent, Spain) there were doubts as to whether the more collectivist enforcement traditions would withstand a challenge to the ECJ. Yet there is no suggestion that the more collectivist methods are intrinsically any less effective and the collectivist approach has been endorsed in relation to *law-making* within the EU, as evidenced by the formal inclusion of the social partners in the legislative process relating to the social policy field. It remains to be seen how the ECJ will strike a balance between national approaches and the growing *acquis communitaire* in the sphere of remedies generally.

While it is usually the case that the Member States accept the need for EU equality laws, policies and machinery this does not automatically produce any consensus as to what should be done to further equality goals at EU level. The difficult negotiations over EU social policy generally and over particular instruments such as the Pregnant Workers Directive and the Parental Leave Directive are well documented. It is also clear that, despite the renewed and extended commitment to equality in the Treaty of Amsterdam, there will still be difficulties in securing pro-equality measures.

Different Member States stand in distinctly different relationships to the EU in relation to equality laws and policies, playing different roles and influencing policy or being influenced by policies differently. Where the EU does command influence over an issue, for instance where it issues a Directive which necessitates legal change in a number of Member States, those states, though generally accepting the imperative to give effect to the Directive, will develop distinctly "national" responses to this imperative. This response will reflect their political and legal culture in general, and the historic approach to the particular policy and legal issues in question. Although plainly evident in relation to binding measures this was particularly true of soft law measures which at times produced little or no direct response, though the issues raised may have been pursued eventually and indirectly.

In the partner states, difficulties regularly manifested themselves at national level with regard to the implementation of EU laws and policies, even where the intention of those measures was to establish minimum levels of protection. The problem was particularly acute in the United Kingdom under the Conservative government 1979-87 as evidenced most clearly in relation to the Parental Leave Directive where, for example, the United Kingdom government "opted-out" under the terms of the Protocol on Social Policy. Reluctance or lack of enthusiasm for EU measures can also be seen in Ireland (in relation to the implementation of the Parental Leave Directive), and Spain (in relation to

Article 11 of the Pregnant Workers Directive which referred to the right of pregnant workers faced with health and safety risks to cease work with pay, where no alternative employment exists). While in some cases there may genuinely be room for debate over the requirements of the EU measures in question, the cases cited attest to political strains, usually a reluctance on the part of the government to place the financial burden of equality policies on employers. They indicate the continuing need for well-organised and active lobbying at the national level: although the EU may have "occupied the field" in terms of securing legislation or establishing minimum standards, satisfactory implementation cannot be presumed and needs still to be addressed at the national level. In each of the cases cited, of course, the ECJ has been or can eventually be called upon to adjudicate on the effectiveness of the implementation measures. States, however, still persist in "watering-down" Community norms even in the face of the threat of legal action.

Amidst this interplay between the EU and its Member States the gender agenda has moved on. In particular there has been a shift in the focus of attention from formal laws towards the policy sphere. This has manifested itself in the notion of mainstreaming. Member States and the EU have declared their political commitment to this strategy and have taken some steps towards concretising it. The attention paid to mainstreaming should not detract from the importance of established equality laws and enforcement mechanisms. Mainstreaming, however, focuses attention on those structural barriers and disadvantages faced by women, matters which equality laws in the liberal tradition, based on formal rights, have not adequately addressed.

The PIP project's brief has been to consider how the mainstreaming strategy might best be implemented. As well as offering specific guidance on this issue the PIP partners also consider it important to consider the EU's position vis a vis mainstreaming. Is it sufficient for the EU itself to implement this policy at EU level or should it be a driver of this policy within the Member States? The analysis just undertaken of the partner states' reactions to EU hard and soft law measures demonstrates that national diversity and legal pluralism is inevitable. Indeed the very nature of mainstreaming would not easily permit it to be translated into hard law. At most the EU might initiate some soft law measure. Yet if the potential of mainstreaming is to be realised and it is not simply to be a bland yet vague concept, it seems essential that the EU should maintain a watching brief over how individual Member States are choosing to translate this policy into practice. More importantly the EU should be an example of how this strategy can be made to work and should disseminate among Member States guidance on best practice.

SECTION FIVE

Dissemination and/or exploitation of results

The dissemination strategy adopted for the PIP project was that the data accrued during the various stages of the project would be exploited in a variety of ways.

1. The partners in the PIP project have, throughout the duration of the project, presented conference papers and published articles either publicising the PIP project in general or the findings of their national research. A complete list of the conference papers presented and articles published is set out in Annex One.

2. The PIP project deliverables in the shape of the country reports and the case studies have, or shortly will be, published. The country reports went on sale as part of the Feminist Legal Research Unit Working Papers series. As for the case studies, the study on sexual harassment is to be translated into Portuguese and published by the University of Fernando Pessoa, Porto. The country reports and case studies are to be found in Annex Two.

3. A project book will be published in 2000 and attempts are being made to secure a Spanish publisher for a Spanish version of this book. A selection of chapters from *Making Women Count* is to be found in Annex Three.

4. The PIP project and its findings have also been publicised in the course of the partners' contacts with government officials and equality agencies during the duration of the project. As a consequence a number of initiatives have been taken to follow up the results of the PIP project:

- The partner institutions in Spain and the United Kingdom have been awarded grants by the British Council and the Ministerio de Educacion y Cultura as well as by a United Kingdom charity (the Holt Trust), to assess the viability/practicality of integrating the gender impact assessment procedure which has been devised as a result of the PIP project into the Spanish law and policy-making process.

- The PIP partners in Ireland have been commissioned by the Irish government to draw up a set of guidelines for gender proofing within the context of the structural funds.

- The PIP partner in Portugal has made a bid to the Portuguese government in conjunction with other PIP partners to carry on with the PIP research.

DELIVERABLE	STATUS
1. Detailed operating rules for conduct of the project	Completed. For use only among the PIP partners.
2. Country Reports	Completed. All PIP partners involved. Published as part of the Feminist Legal Research Unit Working Paper Series.
3. Case Studies a) sexual harassment b) pensions	Completed. Ireland, Portugal, Sweden and United Kingdom involved. The sexual harassment case study is to be translated into Portuguese and published by the University of Fernando Pessoa, Porto.
4. Proposed model for gender-auditing mechanism	Completed. All PIP partners involved. Publicised and distributed at the PIP Colloquium held in Manchester, May 1999.
5. Project Book: *Making Women Count*	Camera ready copy currently being prepared. To be published by Ashgate in early 2000.

SECTION SIX

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Annex One

Publications

Joint Publications

A book based on the PIP project entitled 'Making Women Count', will be published by Asghate Publications in early 2000.

Spain

A Spanish publisher is being sought for a Spanish version of the book, *Making Women Count*.

United Kingdom

The paper presented at a one day workshop in May 1998, *Mainstreaming Equal Opportunities: Succeeding when all else has failed?*, has been published in a book of essays entitled 'Feminist Perspectives on Employment Law', Cavendish Publishing, 1999.

The paper presented to 'Women's Progress: Perspectives on the Past, Blueprint for the Future', Fifth Women's Policy Research Conference, June 12th-13th 1998, Institute of Women's Policy Research, Washington, DC, *Predicting the Impact of Policy: Devising a Gender-auditing model (in the UK),* has been published as part of the conference proceedings.

The paper presented at the Socio-Legal Studies Association annual conference in April 1999, *Integrating Gender into Law and Policy-Making,* will appear in a book of essays entitled 'Social Law and Policy in an Evolving European Union', edited by Professor Jo Shaw.

The paper presented at the Comparative Research Programme on Poverty (CROP) workshop in May 1999 will be published as part of a collection of papers on this theme.

The members of the UK research team have been asked to contribute a piece to a special issue of the *Journal of European Public Policy* devoted to the theme of Gender and Public Policy.

The country reports produced by the Irish, Portuguese, Spanish, Swedish and United Kingdom research teams have been published as part of the Feminist Legal Research Unit Working Papers series.

Sweden

A paper on the PIP project was published in August 1998 in a governmental publication: 'Jaemstaelldhetsmaerkning - konsumentmakt foer ett jaemstallt samhaelle. Ds 1998:49'.

The seminar given to the County Administrative Board concerning the PIP project and different strategies for mainstreaming on September 23rd 1998, resulted in an article in the daily newspaper

Portugal

The paper delivered at the third conference of the Portuguese Women's Studies Society, Centre for Social Studies, University of Coimbra, January 22nd-23rd 1999 has been published in the review Ex Aequo – Revista da Associacao Portuguesa de Estudos sobre as Mulheres.

An article entitled *The Question of Sexual Harassment and National Mechanisms to Prevent it in the Portuguese Context*, was published in the Annual Review of Universidade Fernando Pessoa in May 1999.

A paper entitled *The Pros and Cons of European Social Regulation: The Case of Working Time and Gender*, will be published in the legal review of Fernando Pessoa University.

An article entitled *For a Critical Assessment of the European Union Approach to Positive Action*, will be published in late autumn 1999 in Revista da Universidade Católica de Brasília.

An article entitled *Ethnicité et inégalité entre hommes et femmes au Portugal*, will be published in Toldy, T. and Casqueira Cardoso, J. (eds), 'Equality Between Women and Men at the Gateway of the 21st Century', Fernando Pessoa University Press, forthcoming 2000. The publication will be distributed mainly in Portugal, where it is expected to be of interest to academics and students, in addition to social partners, NGOs and public bodies at both local and national levels.

The sexual harassment case studies are being prepared for publication in co-operation with the TSER project co-ordinator. It is hoped they will be ready for publication by the end of 2000 at the latest.

Conference Presentations

Spain

A paper was presented at the 'Congreso Nacional de Sociologia', *Las politicas informativas, las investigaciones y las estadisticas sobre las mujeres espanolas a final de los anos 90* (September 1998).

A paper was presented to 'Las Politicas Públicas sobre las mujeres: De la teoría a la práctica' (November 3rd-5th 1998).

Sweden

A seminar was given to the County Administrative Board, concerning the PIP project and different strategies for mainstreaming (September 23rd 1998).

Two workshops were held for the County Administrative Board, who have engaged Minna Gillberg on a project concerning gender impact assessment (October 1998).

United Kingdom

A paper entitled *Predicting the Impact of Policy: Devising a Gender-auditing model (in the UK)*, was presented to 'Women's Progress: Perspectives on the Past, Blueprint for the Future', Fifth Women's Policy Research Conference, Institute of Women's Policy Research, Washington, DC (June 12th-13th 1998).

A paper was presented to the Jean Monnet Conference on *EU Citizenship and Human Rights: Theory and Practice*, University of Liverpool (July 4th 1998).

A seminar was held in the Faculty of Law, University of Liverpool on *Integrating Gender into the Policy-Making Process.* A paper was presented by Sue Nott, Fiona Beveridge and Kylie Stephen as well as by a representative from the United Kingdom government's Women's Unit (December 2nd 1998)

A paper entitled *Strategies of Gender Inclusion* was presented as part of a seminar series on 'The Politics of Social Inclusion in the New Europe', organised by the Department of Politics, University of Liverpool (February 16th 1999).

A paper was delivered at the conference 'Equality between Women and Men in Europe: at the Gateway of the 21st Century', Fernando Pessoa University, Porto, Portugal (February 19th-20th 1999).

A paper entitled *Integrating Gender into Law and Policy-Making*, was

presented at Loughborough University at the annual Socio-Legal Studies Association conference (April 6th 1999).

A presentation was given at the TSER conference held in Brussels (April 29th-30th 1999).

A paper was delivered at the Comparative Research Programme on Poverty (CROP) workshop, *Law as a Tool for Combating Poverty*, held at Onati, Spain (May 20th-21st 1999).

A member of the UK research team participated as a discussant in a one day seminar held in Belgium on the theme of 'Integration of the Equal Opportunities Dimension into Personnel Policy in the Public Sector' (June 21st 1999).

Ireland

A paper was presented to the Higher Education Equality Unit Conference *Equality in Education: Challenges and Opportunities*, University College Cork (November 16th-17th 1998).

A paper entitled *Gender Proofing and the European Structural Funds: Outline Guidelines* was commissioned by the Republic of Ireland's Department of Justice, Equality and Law Reform.

Portugal

Participation at a meeting held by the Commission for Equality at Work and in Employment (CEWE) (July 13th 1998).

A paper was presented at the International Conference on Human Rights, Lutheran University of Brazil, Centre of Economic, Legal and Social Sciences, Canoas, Brazil (October 14th-16th 1998).

A paper was presented at the Fifth 'European Culture' Conference, University of Navarra (October 28th-31st 1998).

A paper was delivered on the PIP project at the third conference of the Portuguese Women's Studies Society, Centre for Social Studies, University of Coimbra (January 22nd-23rd 1999).

A paper entitled *Ethnicity and Inequality between Women and Men in Portugal*, was delivered at the conference 'Equality Between Women and Men in Europe: At the Gateway of the 21st Century', Fernando Pessoa University (February 19th-20th 1999).

A paper was delivered at the Conference Session on Ethnic Minorities in Portugal, Home Office Delegation, Braga (September 28th 1999).

Participation at a meeting held by the CEWE (Ministry of Labour and Solidarity) on how to apply the findings and methodologies from the TSER project to a Leonardo da Vinci programme co-ordinated by the CEWE (October 14th 1999).

Participation at a meeting held by the CEWE (Ministry of Labour and Solidarity) where the findings of the TSER project were presented to international partners of the Leonardo da Vinci project. This was a unique opportunity to expose the model developed by the TSER research to representatives of social partners, public bodies and research institutes of Member States not involved in the research (October 28th-29th 1999).

Awards

The British Council and the Ministerio de Educacion y Cultura have made an award to the Feminist Legal Research Unit and Professor Fatima Arranz, who is a member of the Spanish research team, to assess the viability/practicality of integrating the gender impact assessment procedure which has been devised as a result of the PIP project into the Spanish law and policy-making process.

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[i] Case 262/88 [1990] ICR 616.
[ii] Case 262/88 [1990] ICR 616.
[iii] Joan Ruddock, then Minister for Women, speaking at the Gender and Statistics Users Group launch conference on 31st March 1998. See http://www.womens-unit.gov.uk/speeches/jr31398.htm
[iv] Official Journal (1992) C 27/1.
[v] Case 262/88 [1990] ICR 616.
[vi] Rec. 84/635, OJ (1984) L331/34.
[vii] "The dignity of women at work: a report on the problem of sexual harassment in the Member States of the European Community", COM V/412/87.
[viii] [1986] ECR 1607.
[ix] OJ (1986) L 225/40.
[x] Directive 92/85/EEC, OJ (1992) L348/1, based on Article 118A (now 138).
[xi] Case 14/83 Von Colson and Kamann v. Land Nordrhein Westfalen [1984] ECR 1891.
[xii] Case C-271/91 Marshall v. Southampton and South-West Hampshire Area Health Authority [1993] ECR I-4367.