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Occupational equality in the European Union and the United States

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INTRODUCTION

The issue of occupational gender equality is a recurrent one in the European Union and the United States. Despite considerable advances over the last 40 years further progress continues to meet with strong resistance which very often renders existing, conventional legislation powerless. Yet occupational equality is one of the fundamental components of gender equality.

Consequently the subject has become extremely topical in the EU and the US. In June 2009 during a gender equality conference, the European Commissioner for Social Affairs, Vladimir Spidla said that equal pay had been enshrined in European treaties since 1952. He called on member states to cooperate with the Commission and to take measures to ensure equal pay. In France, a report¹ drafted by Ms Brigitte Grésy, member of the Social Affairs General Inspection Office and sent to the French Ministry of Social Affairs on July 8th 2009, examined the question of occupational equality and put forward various proposals to institute it. The main measure was a mandatory 40% quota of women sitting on the boards of directors of large companies! Meanwhile on January 30th 2009 the first bill that Barack Obama signed into law after being elected, known as the *Lilly Ledbetter Act* concerned equal pay.

A close look at the realities of occupational equality in the EU and the US is therefore particularly revealing because in many ways the situation for American and European women is similar despite the very different social models which have led to equally different paths followed in attempts to overcome gender inequality. Generally speaking in Europe the social democratic model has dominated. It has tended to stress public services in its attempt to encourage women to enter the labour market. Nevertheless, the ten former communist countries of Eastern Europe which joined the EU in May 2004 arrived with an entirely different culture of equality. But this culture turned out to be merely cosmetic and collapsed with the fall of the Berlin Wall. Today these countries have had to transpose into their national legislation the Community “acquis” (acquired rights) thus bringing them into line with Western Europe. In the US it has been the employment civil rights movement and anti-discrimination acts as well as private, paid childcare facilities which have allowed American women to seek jobs.

One might have imagined that this massive influx of women onto the labour market from the 1960s and 1970s onwards would have led to European and American society bucking the entrenched trends which had led to inequality. And yet, nothing, or very little happened. As the French labour sociologist Margaret Maruani points out in “**Les Nouvelles Frontières de l’Inégalité**”² “there are few areas in which social upheavals of such a scale have taken place against a backdrop of such deep-rooted inequality”. This situation is all the more surprising given the fact that in Europe and the United States it is generally agreed that women in the workplace have to a great extent been the

¹ *Preparatory report for cooperative with social partners on occupational gender equality, July 2009*

² « Les Nouvelles Frontières de l’Inégalité : hommes et femmes sur le marché du travail : April 2000 La Découverte Publishers

powerhouse of economic growth over the last few years and that their continued presence on the labour market is essential in weathering the global economic crisis and the looming recession.

Yet to various degrees in different member states of the EU and in some states of the US, women continue to be victims of the same type of occupational discrimination and still find themselves up against a glass ceiling between them and genuine occupational equality.

Despite numerous European anti-discrimination directives and federal laws in the US, implementation has not succeeded anywhere in the EU or the US, be it in terms of equal pay, access to specific jobs types, promotion and career prospects, employment contracts or top management posts which remain just as elusive as in the past because of the glass ceiling which few women ever succeed in smashing. Furthermore women represent the majority of the unemployed.



I EMPLOYMENT OF WOMEN IN THE EU AND THE US

A) Considerable Progress has been achieved

Over the last 40 years considerable improvements have occurred on both sides of the Atlantic. First of all, women's right to work is no longer challenged in the omnipresent patriarchal systems that continue to dominate in Europe and the United States. Ann Shola Orloff, an American sociologist has even speculated that we are perhaps now "bidding farewell to maternalism"³. It is true that employment rates amongst women, with or without children, has not stopped growing since the 1960s in the US and in many member states of the EU, particularly in France and Sweden (cf. annex N°1). Thus on both sides of the Atlantic the gender employment gap constantly shrunk over the last 50 years.

In the United States the employment rate for women between 15 and 64 rose from 44% in 1965 to 64% in 1985 and in 2000 reached 72.5%. Although the figure has dropped slightly since 2000, the employment rate of American women of 16 and above is roughly at the same level as rates in Sweden and France (if one were to take as a reference the 25-54 age bracket, in 2006 the employment rate for French women was higher than that of American women (81% and 75.5% respectively but lower than that of Swedish women (86.2%)).

Nevertheless there are huge differences in employment rates of women in different American states (69.4% in 2004 in South Dakota and 49.1% in West Virginia). Similarly there is a wide gap in the United States between skilled women and less-skilled or unskilled women and this has led to major inequalities between these two groups (cf. infra).

Europe has seen similar changes. Since the 1980s women have been the main driver in the growth of employment figures. The Commission's 2009 Report on Equality between Women and Men⁴ – the 6th on this issue and the 2nd to cover the 27 countries of the EU, underscores quantitative improvements in the situation for women on the European labour market (7.5 million of the 12 million new jobs created since the launch of the Lisbon Strategy in 2000 are held by women).

The average employment figures for women between the ages of 15 and 64 stood at 58.3% in 2007 – an increase of 4% compared to 2001 (54.3%) and an increase of 7% compared to 1997 (51.1%). The average gap between employment rates for women and men has narrowed and has dropped from 17.1% in 2000 to 14.2% in 2007. There are however marked differences between member states (57.7% in France, 46.3% in Italy, 70.7% in Sweden, 73.4% in Denmark, 47.4% in Greece, 65.8% in the United Kingdom and 48.2% in Poland). It should be noted that the EU has established a target figure for women's employment of 60% by 2010.

³ The Farewell to Maternalism ? State Policies and employment of mothers in Sweden and the United States by Anna Shola Orloff, Professor of Sociology at Northwestern University, Evanston (Illinois) in *Recherches et Prévisions* N° 83, March 2006)

⁴ Report from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions – Equality between women and men – 2009

B) Continued huge inequalities

This is one of the observations made in the European Commission’s 2009 report (quoted above) which says that “substantial efforts made in the framework of the European Strategy for Growth and Jobs with a view to creating more and better jobs for women have proved more successful in terms of quantity than quality”.

Generally speaking social tolerance for unemployment amongst women remains very high and this is especially the case in the countries of Central and Eastern Europe which joined the EU in 2004 but also in the countries of Southern Europe and even in a country like France.

It would appear that the present global financial and economic crisis is having similar effects on Europe and the United States. A recent article published in the New York Times on February 5th 2009 reported that “for the first time in American history, women could make up the majority of the

⁶ Source : United States Department of Labour, Women's Bureau

labour force". In Europe it also seems that at least initially, the economic crisis has led to a smaller increase in unemployment amongst women than amongst men mainly because the industries hardest hit by this crisis are ones which employ mostly men.⁷

But it is perhaps premature to try and assess the full effects of the crisis on women and men. Recently the European Commission pondered this issue⁸ It calculated the number of jobs lost since April 2008 to be four million. For the moment, according to the Commission, the recession has actually bucked normal trends. And for the first time in April 2009 EU unemployment amongst men was slightly higher than that of women (8.6% for men and 8.5% for women). Within the Euro zone female unemployment (9.4%) nevertheless remains higher than male unemployment (8.9%). However the Commission believes that in the long run "the recession may hit women's jobs harder" – since the service sector – predominantly an industry which employs women - has not been spared by the crisis.

2) The second type of inequality is occupational segregation which persists on both sides of the Atlantic and which takes different forms. In Europe women continue to be trapped in insecure and poorly-paid jobs. In France women hold 80% of all non-permanent job contracts.

Women also make up the majority of part-time workers. In the EU women on average represent 76.5% of part-time workers although there are very low figures for part-time female employment in countries like Bulgaria (2.3%), Slovakia (4.7%) and Poland (12.4%), the reasons being the economic past and social idiosyncrasies of these ex-communist countries.

It is true that part-time work is perceived very differently in different European member states. It is more widespread in the Netherlands (74.9% of the working population), in the UK (42.5%) and in Sweden (40.3%) where it is more often a "choice". In these countries and generally in all Scandinavian countries and also in Germany (46.2%) women have entered the labour market en masse by taking part-time jobs whereas in France women have joined the ranks of the labour force mainly by opting for full-time work. Part-time work grew mostly during the 1980s with the arrival of the job crisis. For women part-time workers who represent 84% of all part-time workers, more often than not the part-time work is not chosen but forced on them together with equally "partial" wages which as a result has the effect of marginalising them in the workplace and reducing their chances of promotion. This has serious consequences for all women. In Europe 85% of the "working poor" are women. Furthermore since their careers are shorter and they are less well paid, the risk of poverty over the age of 65 is higher than for men.

In the **United States** it is also true that women are the most affected by part-time work either imposed on them or chosen (68.3%) although the percentage of women in part-time work is lower than in France (25% compared to 30.6%). Like French women, American women generally want full-time work. As in Europe the majority of the "working poor" are women. This is a phenomenon which has been well documented in the United States since the Great Depression. At federal level poverty

⁷ Cf. Jean Jaures Foundation seminar March 31st 2009 and especially Patricia Thane's Note (N° 24 April 21st 2009) « Women and the Economic Crisis in the United Kingdom » on the JJF website www.jean-jaures.org

⁸ Cf. Conference organised by the European Commission June 15th and 16th in Brussels on Gender Equality in a Time of Crisis

effects 12.7% of women aged 16 and over compared to 9.2% of men. The states hardest hit are the southern states, especially Louisiana where 18.4% of women lives in households with an income at the poverty threshold.

Trapped in unstable or part-time jobs, **European women** also remain locked into certain types of jobs – which often carry stigma or are considered less important because of their feminisation (100% of secretaries, 70% to 90% of primary school teachers, nurses, specialised workers and administrative staff but only 6% of top management, 15% of line managers and 9% of engineers or technicians). They also remain trapped in certain industries – only 5% in agriculture, 25% in industry, but 70% in the textile or service industries. In all 60% of female jobs are concentrated in 6 out of a total of 35 socio-professional categories. This situation which is worsening in some member states, reflects what is going on in schools career orientation for girls, who, although they reach higher initial levels of schooling or training than boys, continue to be shunted into a limited number of “feminine” career paths which have far less career potential.

But over the last few years progress has been made. A study conducted by the Institute for Research on Labour Markets and Professions (IAB) suggests that increasing numbers of German women are now in highly-skilled jobs. The percentage of women working in physical sciences and chemistry has risen since 1994 from 20% to 30%, in journalism from 37% to 45% and in dentistry from 53% to 66%. In addition to observing this major change, IAB has also noted changes within certain professions. A trend seems to be emerging. The numbers of men in unskilled or low-skilled jobs are increasing whereas women are finding more and more jobs. This trend can be seen throughout all EU countries especially amongst younger people although the predominant trends remain deeply entrenched and the changes are still too slow.

This is not the case in the **United States** where the speed of “desegregation” was vigorous during the 1990s. Consequently American girls have increasingly been encouraged to choose male-dominated career paths and as a result the American labour market is far less segmented than in France and Sweden. Thus for example women have taken up posts in previously “male” domains such as business management or middle management and the professions. Of course the situation varies depending on women’s qualifications. Occupational segregation is less obvious the more qualified the women. Less-qualified women generally remain in sectors such as the service industry and low-level employee positions.

But women rarely reach the top of the corporate ladder because of the glass ceiling that exists both in Europe and the United States! Far too few women have access to decision-making in companies and even fewer to the centre of power. In Europe, the percentage of women in positions of power hovers at 33% but never rises above this level. In 2008 only 10% of those at the highest ranks of the top 300 European companies were women. But again there are huge differences depending on the country (44% in Norway which is not a member of the EU and 6% in Greece, 2.1% in Italy and 26.9% in Sweden⁹) In France in 2008 women only represented on average 17.2% of corporate heads (INSEE 2008) and only 8.6% of corporate heads employing more than 250 people. The situation is even

⁹ Source : European PWN 2008

worse amongst the top 40 companies listed on the French stock exchange. In 2007 women only represented 7.5% of those companies' heads and a mere 6% of their executive committees.¹⁰

Similarly, in the **United States**, despite less segmentation of the labour market women represent only 5% of senior managers amongst the top 1000 biggest companies. However it would appear that American women fare better than their European counterparts particularly when it comes to career types and career paths. The glass ceiling seems to be more porous although the jobs that women are able to find differ from those of men in terms of responsibilities (smaller companies etc) salaries and prestige. Women with fewer qualifications have seen no improvement in the position on the labour market and this means that inequalities *amongst* women are widening.

What is not encouraging in Europe is that emerging economic sectors, industries and jobs are reproducing traditional trends whereas one might have thought that these new sectors of the economy, as yet uninfluenced by a male tradition, might have been spared to a certain extent.

3) Third Inequality – pay inequality is the most powerful symbol of job discrimination against women. In the EU the wage gap between men and women for the same job and same qualifications has stabilised since 2003 at an average of 15%¹¹ (16% in 2000). After having shrunk during the 1970s and 1980s the gap has remained unchanged for more than ten years in all member states. Indeed the scale of the gap varies enormously from country to country (less than 10% in Italy, Poland and Belgium, over 20% in German, the UK and Greece and over 25% in Estonia and Austria. In France it stands at 15.8%. Wage equality exists nowhere in the EU.

In **the United States**, despite a huge rise in women's pay during the 1980s and sound increases in the 1990s, the same conclusions have to be drawn. The average gender wage gap stands at roughly 20%. Again the figure varies from state to state (it is lower in the District of Colombia – 14.5% and highest in Wyoming – 40%)

Pay equality is at the very heart of occupational equality. Numerous studies have examined the reasons for its continued existence despite legislation at national and European level introduced many years ago and which banned all forms of discrimination – in particular pay discrimination and despite the increases in levels of education and qualification amongst women which has allowed them to find higher qualified and better paid jobs.

This is a complex issue with numerous causes. Generally speaking one can differentiate between a “structural” gap and an “unexplained” gap. The former finds its roots in the structure of the labour

¹⁰ In her July 2009 report (cited above) Brigitte Grésy suggests in proposal N°32 “the introduction of a mandatory quota for public companies and companies whose shares are traded on a regulated stock market and which employ at least 1000 employees: within six years 40% of directors on the governing boards and supervisory boards should come from the under-represented sex. During a transitional period of two years 20% of directors should be from the under-represented sex” This proposal has met with negative reactions, particularly amongst women directors like Suzanne Berger, an American professor of Political Scientists at MIT and member of the BNP-Paribas board (cf. Le Monde July 16th 2009)

¹¹ Calculation of the wage gap is based on the gross hourly wage of full-time and part-time workers. This is the official European indicator and is far more representative of the plight of women on the job market since many women work part-time.

market in which there are inherent inequalities rooted in horizontal occupational segregation (less well-paid industries) and vertical occupation segregation (lower ranking jobs) the consequence of which is that women do not have the same jobs as men and do not enjoy the same career paths as men because of differences in the type of professions pursued, differences in the type of contracts they are offered, differences in working conditions and in sectors of employment.

The structure of jobs remains gender-based as does career orientation for girls, which, in Europe in particular, continues to steer girls into specific areas of the labour market that have been abandoned by boys. The latter type of gap is rooted in the perceived lower worth of jobs and professions occupied by women despite the lack of any objective justification for this lower perceived worth.

Lastly, domestic chores remain to a great extent the responsibility of women and reconciling work and family life is far harder for them often leading to interruptions in their careers or part-time work. In other words, it is the overall social model which is at fault.

4) Lastly, the fourth inequality: the issue of reconciling private and professional lives. This issue, together with the pay equality, is pivotal. For it goes to the very heart of the patriarchal system which still dominates widely throughout Europe and the United States and challenges its very foundations. There is no doubt that today this issue marks the “new frontier” of European and American feminism. What makes it unique is that unlike other battles that women have waged to win their rights, this issue, although it still concerns essentially women, in essence epitomises a genuine **blueprint for society** involving not only women but men as well. Its ramifications go well beyond the balance between family life and work life. They involve the responsibilities of governments and local authorities as well.

We are still far from realising this new form of society. In the US and in Europe, women have no choice but to continue to do most household chores and most of the child rearing. In Europe employment rates for women slump after the birth of a child (-13.6% on average) while the employment rate for men rises. The rate of employment amongst women with children is on average only 62.4% compared to 91.4% for men. It should be noted that the differences between member states are far greater in this area than in others. The largest gap is in Malta where the employment rate for mothers plummets to 32.6% while the lowest is in Slovenia where the employment rate for mothers is higher than that of women without children and stands at 84.8%. In Sweden the employment rate for women with or without children is the same.

The European Union has since its creation considered gender equality to be a fundamental principle and in its determination to achieve it now considers the reconciliation of family and work life as central to its success.

In the **United States** employment amongst married women with children rose considerably during the 1980s. This was the result of wage increases which women achieved and improvements in their working conditions. And yet the employment rate for women with two children is 14% lower than that of women with no children. Indeed the figures seem to have dropped over the last decade as a result of the daunting organisational and logistical problems that continue to weigh on potential working mothers.

The 1990s saw growth of 15% in employment among single mothers within less than a decade (85%). This increase was prompted by reforms to state welfare introduced in the 1996 act known as the *Personal Responsibility and Work Opportunity Act* (PRWORA) that tied the granting of welfare to a minimum level of employment on the part of the beneficiaries and put an abrupt end to the “dependency” of the impoverished. The problem of childcare has however continued to be a burning issue for such women.

Consequently, despite huge differences, one can say that in general the employment situation for European and American women presents similarities and remains mainly characterised by patent discrimination despite legislation on both continents which imposes or encourages occupational equality.



II LEGISLATION IN FORCE

A) The European Union

Since its creation following the Treaty of Rome in 1957, the European Union has always considered the principle of equal treatment for women and men as central. Since then it has adopted legally binding directives, drafted recommendations and devised action programmes which have been assessed every year since 2004 in an annual rapport which the Commission presents to the European Council, the European Parliament, the European Economic and Social Committee and the Committee of Regions. An Equal Opportunities Consultative Committee set up in 1981 assists the Commission with these issues. Similarly the European Parliament and the Council legislate on the basis of co-decision making when it comes to equality directives. A Committee on Women's Rights and Gender Equality also participates and publishes reports and drafts proposals to ensure equal treatment between women and men.

1) The Treaties

Article 119 of the 1957 Treaty of Rome, which has since then become article 141 of the Treaty of the European Communities, guarantees equal pay for women and men. As new treaties have been drafted the legal basis, which underpins equality policies drafted by the Union, has been widened. In 1997 the Treaty of Amsterdam made equality one of the fundamental principles of community law by adding occupational equality to article 2. The December 18th 2000 Charter of Fundamental Rights reaffirms the ban on all forms of discrimination based on gender and compels all states to achieve gender equality.

The **Court of Justice of European Communities** has handed down numerous rulings on gender equality. Most importantly it has defined the legal framework of direct and indirect gender-based discrimination and has helped victims by changing the burden of proof.

2) 13 directives

Armed with legal basis no fewer than **13 directives** have helped bring about occupational equality since the 1970s (cf. annex 2 page XXX). One of them is **directive 75/117EEC** which broadens the scope of article 119 and establishes the principle of equal pay between women and men for equal work. **Directive 76-207 February 9th 1976** defines the implementation of the principle of equal treatment between men and women in access to employment and occupational training. **Directive 79/7/EEC December 19th 1978** specifies the gradual implementation of the principle of equal treatment between women and men in the domain of social security. Of **two 1996 directives**, one deals with gender equality in social security and the other with the protection of self-employed women during pregnancy and maternity leave. **Directive 92-85-EEC** aims to provide better protection for pregnant women in employment. **Directive 97/80/EEC December 15th 1997** defines the burden of proof in cases of sexual discrimination.

Directive 2002-73 September 23rd 2002 amended directive 76-207 EEC on the implementation of the principle of equal treatment in access to employment, vocational training, promotion and working conditions and specifically introduces the concept of indirect gender-based discrimination.

This same directive also tackles the issue of sexual harassment in the workplace. It is estimated that in the EU between 30% and 50% of women are victims of sexual harassment in the workplace. This figure is thought to reach 60% in Spain, Italy and Portugal. The directive stipulates that *“harassment and sexual harassment within the meaning of this Directive¹² shall be deemed to be discrimination on the grounds of sex and therefore prohibited. They are contrary to the principle of equal treatment between men and women... in the framework of national legislation, collective agreements or national practices, member States shall encourage employers and those responsible for access to vocational training to take all measures necessary to prevent all forms of discrimination based on gender and, in particular, harassment and sexual harassment in the workplace”*

Thanks to this directive the European Union has come into line with US and Australian legislation and that of Belgium and France where sexual harassment is a criminal offence.

Since this directive was adopted other member states such as Spain, Italy and Poland have amended their legislation along similar lines (cf. infra) as stated in the Commission’s Report on the Application of Directive 2002/73 to Council and the European Parliament of July 29th 2009

Lastly, **directive 2006/54 July 26th 2006** includes seven directives based on article 119 which deal with occupational equality between women and men (cf. annex 3)

In principle all *“community acquis (acquired rights)”* must be transposed into national legislation by specific deadlines. In 2008 the Commission began infringement proceedings against a number of member states, which had not yet transposed directive 2002/73/CE. Since this directive entered into force on October 5th 2002 it should have been transposed into all national legislations by October 5th 2005. On January 15th 2009 the European Parliament adopted a resolution calling on *“member states to ensure that all provisions of directive 2002/73/CE be fully, correctly and effectively transposed and applied adequately.”* Clearly it has proved difficult to get member states to apply European directives on equal treatment between women and men. The difficulty stems from the philosophical differences on this issue between the European Union and many member states. Two opposing approaches exist within the EU. On the one hand the Commission, the European Parliament and countries like Sweden and Finland believe in an equality-based approach while others, in particular Southern European countries and France and Germany believe in an approach that seeks to *“protect”* women.

¹² **Harassment:** where an unwanted conduct related to the sex of a person occurs with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. **Sexual harassment:** where any form of unwanted physical, verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment

3) Gender Mainstreaming – an integrated approach to gender equality

The concept of gender mainstreaming¹³ first appeared in international texts following the third UN Women's Conference in Nairobi in 1985. It aims to include gender equality in all policies and programmes and analyse the consequences on men and women respectively before any decision is taken. It has now been taken up by European institutions such as the Council of Europe and the European Union.

In 1990 the EU made gender streaming into a "community acquired right" (acquis communautaire). On September 21st 1991 the European Parliament adopted a resolution from 4th UN Women's Conference in Beijing saying that "it is essential to continue and to actively coordinate the integration of equity and equal opportunity policies and that all policies, programmes and structures, especially those in the legislative framework, be envisaged with a view to them being applied to the feminine sex".

In February 1996 the European Commission adopted a communication on mainstreaming. This was presented as a first step towards a concrete commitment on the part of the European Union to achieve community-wide gender equality.

Gender mainstreaming is defined in the communication as *"not limiting efforts to promote gender equality only to the implementation of specific measures to help women but using all actions and general policies to strive to achieve equality by actively and visibly pay attention into their design to the possible effects they might have on the respective situation of women and men"*.

The gender equality dimension had to be taken into account in all policies and activities from planning and implementation to monitoring and assessment. In 1997 the Treaty of Amsterdam stated quite clearly the European Community's commitment when it listed as one of tasks and aims of the Community, to *"strive to eliminate inequalities and to promote gender equality"* (article 2 and 3 of the ECT).

Mainstreaming has so far met with varying degrees of successful implementation in the member states, often because it is poorly understood and it appears complex but also because it often appears to be form of "women's demand for rights" as Réjane Sénac-Slawinski explains in the above-cited article. Difficulties also persist because feminist movements often fear that with gender mainstreaming the issue of gender equality may vanish and with it affirmative action for women, if it is dealt with at every level. In France, mainstreaming took concrete form in 2004 with the drafting of a Charter on Gender Equality.

4) Strategies, Reports and Action Programmes

¹³ Cf. *Le gender mainstreaming à l'épreuve de sa genèse et de sa traduction dans l'action publique en France*, by Réjane SENAC-SLAWINSKI, Harmattan / Politique européenne- 2006/3 - n° 20

a) **The employment strategy launched** in 1997 and renewed at the Lisbon Summit in 2000 is germane to European policies. At that time the European Council set a target of 60% for women's employment rates by 2010 and stated explicitly that women's presence on the labour market is essential in order to achieve the overall employment target. The following Councils also adopted provisions on occupational equality, in particular in Barcelona in 2002 when targets were drawn up for childcare and Brussels in 2003 when the Commission was called upon to draft an annual report on progress in gender equality.

Since then six reports have been drafted (cf. infra). In 2006 the Brussels European Council adopted a **European pact for Gender Equality**, encouraging member states and the European Union to take measures to combat occupational inequality and encourage improvements in the balance between private and professional lives. In 2008 the Commission's attention focused on the reconciliation of work and home life. Several measures were adopted to change directive 92/85/EEC related to protection during maternity and extending the minimum maternity leave from 14 to 18 weeks without any loss in pay.

b) Reports

Since 2004 six reports have been tabled by the Commission to the European Council (and to the European Parliament, the European Economic and Social Committee and the Committee of Regions). The first, in 2004, underlined progress achieved in gender equality but also pinpointed persistent inequalities particularly in the labour market. The second, in 2005 mainly examined the plight of immigrant women. The third in 2006 was the inspiration for the European Pact on Gender Equality (cf. infra). It encouraged member states to take measures to combat occupational inequalities and thereby achieve a better balance between work and private life. The fourth report, published in 2007, recommended the elimination of differences on the labour market, encouraged a better balance between professional and home responsibilities and guaranteed the support of cohesion and rural development policies and called on effective implementation of the legislative framework.

The sixth report in 2008 was the first to cover all 27 member states of the EU. It stressed increased differences amongst EU countries when it comes to equality and explained the "equality culture" for women in former communist countries was very different to that in Western Europe. Today, however, what unites all these women is far more powerful than what divides them. This report was published at the halfway point in the roadmap and the Equality Pact.

Lastly the 2009 report was adopted against a backdrop of a general economic slowdown, which has had negative consequences on growth and employment throughout the Union. The report reconfirms *"the essential character of gender equality for the success of the European growth strategy...employment of women being one of the driving forces of the European labour market since the launch of the Lisbon Strategy"*. The report goes on to say that the most important challenge is to *"encourage an equal sharing of private and family responsibilities between women and men"*.

c) Action programmes

- **The 2006-2010 roadmap**

The 2006-2010 roadmap for gender equality is a follow-up to the framework strategy for gender equality 2001-2005. It reinforces existing activities and suggests new ones. It establishes priorities for the Commission for that period and identifies six priority areas – equal economic independence for women and men, reconciliation of private and work life, equal representation in decision-making, eradication of all forms of gender-based violence, elimination of gender stereotypes and promotion of gender equality in foreign and development policies.

Unique targets and key actions to facilitate realisation are cited for each area. The roadmap also combines specific actions and the incorporation of gender equality into all EU policies and activities (gender mainstreaming). A roadmap progress report was published in 2008 which points out that most member states will not reach the Barcelona targets for childcare facilities by 2010. In 2010 there will be an assessment and a follow-up proposal.

This roadmap has given new momentum to Community policies in this area. It reflects the Commission's determination to move forward with the gender equality agenda by strengthening partnerships with member states and other players.

- *The European pact for gender equality*

This pact, adopted by the European Council in March 2006, seeks to encourage members states to take action in the following domains: closing the gender gap and combating stereotypical roles in labour market, promoting employment of women of all ages and reducing the gender gap in employment in particular by opposing all forms of discrimination, applying the principle of equal pay for equal work, combating gender stereotypes, especially when linked to labour market gender segregation and in education, examining ways of ensuring that welfare systems help promote employment of women, encouraging greater powers for women in political and economic spheres and female entrepreneurship, encouraging the social partners and companies to develop initiatives to promote gender equality and plans to introduce gender equality in the workplace, integrating the principle of gender equality in all areas of public life.

5) Financial support

To help realise its call for equality, the Union has implemented financial programmes such as **PROGRESS** (2007-2013). Earmarked with a budget of 743 million Euros, the programme aims to support concrete implementation of the principle of gender equality and encourage the incorporation of the issue in all EU policies. The programme is divided into five sections which correspond to five major areas of activity: employment, social security protection and coverage, working conditions, the fight against discrimination and diversity and gender equality. **The European Social Fund** also promotes gender equality.

6) The European Institute for Gender Equality

The European Institute for Gender Equality which was established in 2006 but has only been operational since 2008 exists to provide expert opinion, to improve understanding of the subject and

to raise the public's awareness about these issues. It helps the European institutions and the member states to promote gender equality in all Community policies and transposed national policies and to fight against gender-based discrimination.

7) The European Network of Women in Decision-Making in Politics and the Economy

This network was launched in June 2008 and represents a European-wide platform for the exchange of good practices and effective strategies to improve the gender balance in decision-making posts. Since its creation, the European Union has become visibly far more women-oriented than the vast majority of individual member states. Indeed women's rights are recognised and affirmed nowhere in the world more than in the EU, in particular thanks to the large body of law which it has assembled and the action programmes and corresponding funding earmarked for encouraging member states to implement equal opportunities between women and men. The legal instruments exist. What remains to be done is to ensure that they are used to their full extent by the member states.

B) Examples of legislation on occupational equality in some member states

As a result of this corpus of equality legislation in Europe, over the years most member states have drafted laws and regulations which impose occupational equality and yet nowhere has true equality actually being fully achieved. France, Sweden and more recently Spain have done much from a legislative point of view at least. The former communist member states of the EU present a different picture of occupational equality in actual fact it is more cosmetic than anything else.

I) France

For some time now France has benefited from a broad legal and regulatory framework in the area of occupational equality which has been strengthened over recent years. Nevertheless it has to be admitted that this has not produced the results hoped for. But it does represent progress without which nothing would be possible. Its origins can be traced back to French, international and community law.

The French sources are the preamble to the 1946 Constitution which states that "the law guarantees women equal rights to those of men in all domains" including the right to employment. Article 1 of the 1958 Constitution, amended by the constitutional act of July 23rd 2008 stipulates that "the law encourages equal access of women and men to elected positions and elective functions and occupational and social responsibilities" These provisions paved the way for the political equality act voted in 2000 and made it possible to draft similar provisions in the economic and social spheres of life (cf. report by Brigitte Grézy cited on page 1).

The international source of present French legislation is Convention III of June 25th 1958 adopted by the ILO and ratified by France 25 years later. It obliges the state parties to promote equal opportunities for and treatment of men and women. Lastly, the Community source, the genesis of which has just been mentioned, comes from article 119 of the Treaty of Rome and the 1975, 1976, 1978 and later directives.

a) The July 13th 1983 law on occupational equality

For the last 30 years a raft of laws has been adopted to encourage occupational equality. Prior to the July 13th 1983 law, the July 22nd 1972 law enshrined equal pay in law and the July 11th 1975 law made it a criminal offence to discriminate on the basis of gender in recruitment and redundancy without “a legitimate reason”.

The July 13th 1983 law on occupational equality, known as the “Roudy Law” after the minister for women’s rights of the time, incorporated and made more explicit all of the previous provisions. Legal proceedings could now be undertaken by representative trade unions in a company in lieu of the employee. A new chapter spelling out occupational equality was added to the Labour Code. But most importantly this law ushered in several novelties. Its effect was to change French law’s approach to women from “protective” to an equality-based approach. These newly-won rights also applied to men (parental leave or parental leave when a child is ill). It introduced the concept of “affirmative action”, little known in French law until then - action taken temporarily in favour of women and aimed at bringing reality into line with the law. Lastly it spelled out two unprecedented measures to create the necessary conditions for equality – the comparative situation report and the equality plans.

- ***The comparative situation report***

This document, drawn up every year by the head of every company employing more than 50 people, takes stock of the comparative situation in the company regarding general employment conditions and promotion for men and women. It spells out measures taken to achieve greater equality.

- ***The equality plan***

This is the instrument which makes it possible to implement the positive action principle. On the basis of the comparative situation report, it drafts the temporary catch-up measures for women employees in a company in areas such as vocational training, promotion, pay etc... Its content is negotiated between management and the unions. It may win state financial aid if the measures are considered to be exemplary. It has to be admitted that the comparative situation reports have turned out to be relatively disappointing in terms of content. The equality plans have not yet gone beyond the experimental stage. 30 have been finalised in 17 years affecting some 5000 women, which therefore makes them insignificant.

Unlike legislation elsewhere (American, Belgian or Canadian) none of these provisions is binding.

b) In 1987 – contracts for employment gender equality (mixité)

These were an addition to the French legislative arsenal. They are more flexible than equality plans since they are drawn up individually rather than collectively. Their aim is to encourage the diversification of jobs occupied by women and make it easier for women to work in SMEs and SMIs, which have traditionally been considered to be male bastions.

c) The May 9th 2001 law

This law, known as the “Génisson Law” after the MP who was rapporteur when it was debated in parliament, introduced many new measures such as the obligation to negotiate occupational equality every year in all companies with more than 50 employees and every three years at the industry level. It also removed the ban on night shifts for women and made it compulsory for companies of over 50 employees to draft regular comparative situation reports.

d) The November 16th 2001 Law made changes to the burden of proof in discrimination cases, forcing employers to justify their acts and introducing into French law the concept of indirect discrimination as spelled out in Community case law and in the European directive 2000/78/EC of November 27th 2000 and 2002/73.

e) The March 23rd 2006 law

More recent French legislation compels companies with at least 50 employees to negotiate measures for closing the gender wage gap by December 2010. These negotiations are held on the basis of the comparative situation reports. Given the limited effects of previous legislation this new law concentrates on bargaining between the social partners not only in order to achieve wage equality but also to implement measures to allow reconciliation of private and professional lives and to help larger numbers of women win decision-making jobs in companies.

Sadly this new law has not yet succeeded either in significantly changing general trends in employment or specifically helping employment of women in France. This is paradoxical because French women began as far back as the early 1960s to occupy jobs, far earlier than other European women. It is also odd because the level of women’s employment in France is one of the highest in Europe and there is a well-developed network of childcare facilities and a system of child benefits in the country albeit still inadequate. For these reasons an April 17th 2007 circular reminded local authorities of the details of application and respect of the 2006 law.

f) The May 27th 2008 law

This most recent law includes provisions transposing into French law Community directives on gender discrimination namely three specific directives – 2000/43, 2000/78 and 2002/73. The European Commission felt that French law had not fully grasped the ramifications of these directives

particularly in terms of the definition of direct and indirect discrimination and moral and sexual harassment which are now considered to be forms of discrimination¹⁴.

These amendments put an end to the issue of sexual harassment which has been the subject of several laws since 1992. In that year two acts were promulgated. One introduced the concept of sexual harassment into the Criminal Code and the other into the Labour Code. They were revised as a result of the January 17th 2002 law and the January 3rd 2003 law in order to bring them more (but not sufficiently) in line with the European directive 2002/73 by removing the concept of “abuse of authority” in both the Criminal Code and the Labour Code, by removing the characteristics of sexual harassment which were previously included, by changing the burden of proof and introducing the concept of moral or psychological harassment.

Furthermore it is incumbent on the employers to prove that the acts they are accused of are not sexual harassment. An employer who has taken a discriminatory measure against a female employee who is either a victim of or witness to moral or sexual harassment or who has reported a case of moral or sexual harassment as defined in articles L 1152-1 and L 1153-1, can be punished by a one-year prison sentence and a fine of 3,750 Euros.

The May 27th 2007 law no longer considers sexual or moral harassment as a form of violence, as was previously the case in French law, but instead considers it, as elsewhere in Europe and in the United States, as a form of discrimination.

II) Spain

As in France, the inspiration for Spanish equality laws are to be found in the country's (1978) Constitution - thus they were drafted later than in France. More specifically in article 35 the constitution says that *“All Spaniards have a duty and a right to work, to a free choice of professions and functions, to promotion through work and to sufficient pay to meet their needs and those of their family without being victim in any case whatsoever to gender-based discrimination.”*

The other source of Spanish equality laws, as in France, is Community law. When Spain joined the European Union in 1984 is transposed into national legislation the Community directives on this subject.

a) **The March 11th 1980 Law N° 8** guaranteed the principle of equal treatment between women and men in employment and reconfirms the right of workers not to be discriminated against on the basis of gender.

b) **The March 3rd 1989 Law N° 3** extended maternity leave from 14 to 16 weeks.

¹⁴ According to article L 1153-2 of the Labour Code “no employee, no applicant for recruitment, a training course or a period of vocational training in a company may be punished, dismissed or be subject to direct or indirect discrimination, especially by way of pay, training, transfer, posting, qualifications, promotion, secondment or contract renewal for having been subjected to or refused to be subjected to acts of sexual harassment”.

c) But it was above all the March 15th 2007 Law which represented a watershed in Spanish equality legislation. This was a particularly “proactive” law the aim of which was to put an end to discrimination that Spanish women suffered in the labour market. It is true that they face a difficult situation. Women’s employment rates stand at 53.2% and they represent 80% of part-time employees. Their pay is on average 30% lower than that of men’s while unemployment rates amongst women is double that of men.

The 2007 law forced companies with over 250 employees to negotiate “quality” plans which include measures to improve access to jobs, qualifications, promotion, training, pay and the possibility of organising working hours. In case of disputes the burden of proof is on the employer. This law also dictated that from 2015 onwards all boards of directors or “large companies” must have at least 40% women on them. Lastly, the flagship measure was the introduction of two weeks of paternity leave – to be extended to four months by 2013.

It is too soon to draw any conclusions on the consequences of this law which is part of a larger programme of action to promote women in all spheres of society and politics.

III) Sweden

Sweden’s Constitution, which was revised in 1974, also contains an article forbidding all gender-based discrimination. Like France, Sweden has signed the international conventions drafted by the United Nations and the BIT calling for the elimination of all forms of discrimination against women. But unlike other European countries, as early as the 1930s the norm in the “Swedish social model” was a two-income household. Elsewhere the traditional division of roles into male and female ones still dominated. Indeed Sweden is considered to be the world’s most progressive country in terms of gender equality. In the early years of the 20th century Sweden granted several rights to women – the right to vote in 1921, the right to contraception in 1938, a ban on firing a woman because of pregnancy, the birth of a child or marriage in 1939 and separate taxation in 1971. In 1974 a law made it possible for Swedish couples to divide up paid parental leave at the birth of a child.

It was only much later that anti-discrimination laws were introduced – in particular when European directives were transposed into Swedish law. Now a vast corpus of law forbids gender-based employment discrimination.

a) The 1980 law on equal opportunities, revised in 1991

This was the first law in Sweden to explicitly ban sexual discrimination. Revised in 1991 it reinforced this ban in the workplace.

b) The 1999 laws, amended in 2003

These laws were inspired by directive 97/80/EC on the burden of proof in cases of sexual discrimination (cf. supra). They were amended in 2003 to satisfy the requirements of directive 2000/43/EC on the principle of equal treatment between people regardless of race or ethnic origin

and directive 2000/78EC, which laid down a general framework for equal treatment in employment and work.

c) Parental leave

Parental leave has existed in Sweden since 1974 and is in a sense the trademark of the Swedish approach to promoting gender equality since it obliges both women and men to be involved in household chores and family responsibilities. At the moment parental leave is 16 months of paid leave – the amount depends on the salary at the time of leave. Theoretically open to both parents it is in fact usually the mothers who opt for the leave except for 60 days which are exclusively reserved for fathers and are lost if not used by them. A wide range of childcare facilities represents the second pillar of this incentive scheme.

Despite a long history of ever-increasing gender equality, thanks to a great extent to Social Democratic governments which dominated Swedish political life in the 20th century, occupational equality is far from a reality in Sweden today. Although there are large numbers of women in politics, resistance continues on the labour market. Swedish women remain stuck in a limited number of jobs and industries, and very often have insecure jobs. They are not well represented in decision-making bodies, their pay remains lower than that of men although it is true that the rate of employment of women is almost equal to that of men (77% compared to 83%) and 86% of children between the ages of 1 and 5 benefit from a crèche or childcare facilities.

However, most Swedish women work part-time and women only represent 27% of those sitting on boards of large companies (compared to 9% in France!) The small numbers of women in the top ranks of companies in Sweden is a subject of considerable debate in the country. As in France, the possibility of quotas is being debated and has provoked considerable hostility from employer organisations and large companies. Sweden is a particularly interesting case because it is in Swedish politics that gender equality is most advanced despite the weight of traditional attitudes which, as in the economy, consider family to be more important than women's rights. 47% of Swedish MPs are women and the cabinet is made up of 40% women.

Elisabeth Elgan, director of the Institute for Research in Contemporary History at Södertörn University in Stockholm suggests the following explanation to this conundrum¹⁵ *“As we see it the answers are to be found in the different ways in which politics and the economy function. The aim in politics is to win power and keep it. As a result, politics is more receptive to public opinion, social movements or organised opinion. The economy functions differently and exists to generate profits. Companies are not as dependent on public opinion and are less sensitive to pro-feminist movements. In actual fact it is amongst some of the largest companies where brand image is all important that one can find some women occupying important and high-profile posts.”* This explanation applies to all companies in the United States and Europe.

IV) Poland

¹⁵ Economic Power in Sweden and Social Inequalities in Informations Sociales N° 151 CNAF, January 2009

Poland, like other former communist countries of Central and Eastern Europe which joined the European Union in 2004, has a very different history of occupational equality compared to that in the countries of Western Europe. The communist regime introduced gender equality based on the concept of “working mothers”. However, this equality was little more than lip service, especially in Poland and despite some progress and advantages offered to women, even under the communist regime Polish women received lower wages than men. They were often less qualified and far fewer of them occupied decision-making positions in state companies. The poor quality of childcare facilities also contributed to keeping them in their traditional role of “mothers” rather than “workers”

The purely cosmetic nature of communist equality was exacerbated during the transition period to the market economy after the fall of the Berlin Wall when the plight of Polish women deteriorated rapidly particularly on the labour market. The Polish Constitution of April 2nd 1997 guarantees gender equality. In article 33 of the constitution it states that *“in the Polish Republic women and men have equal rights in family, political, social and economic life. Women and men also enjoy equal rights in education and training, employment and promotion. They have the right to equal pay for work of equal value, to social security coverage and access to employment, functions, dignities and distinctions”*.

Article 233 says, *“it is forbidden to restrict the freedoms and the rights of man and citizens purely on the basis of race, gender, language, religion or belief, social origins, ancestors and wealth”*.

Furthermore Poland signed the Convention on the Elimination of Discrimination against Women on May 29th 1980 and ratified it on July 30th of the same year while expressing some reservations on parts of it. Since then, with the inevitable introduction of the “acquis communautaire” into Polish law at the time of accession to the European Union, Poland has drafted laws to eliminate discrimination against women and promote gender equality. As a result a chapter on equal treatment of women and men was added to the Labour Code in 2001 and 2002 that provides definitions of direct and indirect discrimination.

Nevertheless Polish women experience considerable difficulties especially on the labour market. The employment rate for Polish women is one of the lowest in the European Union (48.2% in 2006). To a great extent this is because of enduring influence of traditional family-centred concepts that never disappeared under the communist regime but also the huge influence of the Catholic Church, which was responsible for overturning abortion laws and making abortion illegal. A government body set up in 2001 to oversee the implementation of gender equality but which had no decision-making powers was disbanded in November 2005. In March 2005 this body drafted a general law on equality in the political, economic and social spheres, which was the subject of the longest debate ever in the Polish parliament and was rejected in June 2005.

Since then nothing has really been done to encourage equal treatment between women and men on the labour market or to help reconciliation between professional and family life. State childcare facilities have become increasingly rare and families have to resort to costly, private childcare facilities, obliging many women to give up working.

It is of course difficult to accurately assess the situation for women in Poland because of the dearth of statistics. But there is still no general gender equality legislation in Poland. Nor has any equality strategy been introduced. Nor are there any incentive schemes to encourage fathers to take over more domestic responsibilities.

So it was hardly surprising that on 14th May 2009 the European Commission referred Poland to the European Court of Justice (ECJ) for not having transposed European regulations banning discrimination in access to and supply of goods and services (directive 2004/113/EC). European law forbids any gender-based discrimination outside the workplace and gender-based direct and indirect discrimination and sexual harassment. This regulation applies to goods and services offered to the public outside the private and family spheres.

C) The United States

In the United States the strategy underpinning the battle for occupational equality has been very different from the one that has prevailed in Western and Eastern Europe. It was the anti-discrimination acts of the 1960s (which had their shortcomings) and rulings of the Supreme Court used by feminist movements in their fight, which represent the essential arsenal of the still unfinished fight for employment equality.

Two amendments to the US Constitution laid the foundations of women's rights. The 19th amendment gave women the right to vote in 1920. The 14th amendment (1868) confirmed equal protection under the law for all Americans, whatever their race, gender, religion and regardless of the minority they might belong to. Throughout the history of the country, equal protection by the law, enshrined in the US Constitution, has always been at the origin of corrections to social and legal injustices such as school segregation and discrimination against women in the workplace. Judges have always scrupulously scrutinised sexual discrimination and it is only tolerated if it is deemed to reflect genuine and reasonable differences between sexes and if it is considered to serve the public good.

A number of federal laws have applied these principles, especially since the 1960s, by promoting affirmative action, a concept which is little used in Europe, especially in France although recently public debate on the subject has begun.

a) The 1963 Equal Pay Act

As in Europe one of the first of these federal laws examined the need for equal pay for equal work for women and men. This act modified the 1938 *Fair Labor Standard Act* and outlawed wage differences

based on gender discrimination. This act is presently being strengthened by the *Paycheck Fairness Act*. A first draft of this act was tabled in 2005 and Congress should adopt it soon.

b) The 1964 Civil Rights Act

Part IV of the Civil Rights Act, adopted in July 1964, forbids any discrimination during recruitment or a person's career based on race, sex (this word was added at the last moment), skin colour, religion or national origin in all bodies employing at least 15 people. A judge who deems that a form of discrimination has occurred may then take any affirmative action necessary in order to remedy the situation. Rulings since then confirm that affirmative action is perceived as a way of remedying practical or legal injustices done to certain groups at the time of seeking an education or employment. For example, in 1978 the *Regents of the University of California* ruling handed down by the US Supreme Court stated that a quota procedure was not in conformity with the principles of affirmative action.

This act also led to the creation of the Equal Employment Opportunity Commission (EEOC) which was to play an important role in the implementation of the vast corpus of anti-discrimination legislation which was to follow, especially the issue of sexual harassment which has been the subject of particular attention in all spheres of American life (cf. *infra*).

c) The 1965 Executive Order

This act stipulates that all companies wishing to participate in bids for public tenders must ensure that their recruitment policy is free of all forms of discrimination as spelled out in Part VII of the *Civil Rights Act*

d) The 1969 Philadelphia Plan

This plan strove to ensure that all companies which won public contracts would give priority to minorities in recruitment until such minorities reached a specific percentage of the workforce.

e) The 1972 Equal Employment Opportunities Act

This act extended the powers of the EEOC and strengthened bans on discrimination in private companies with more than 15 employees, in state and private schools, in local and federal government, in state and private employment agencies and in trade unions with more than 15 members etc. The same year article IX of the Education Act introduced equal gender treatment in education programmes including all state, private and ivy-league universities.

f) The 1991 Civil Rights Act

In order to conform with a number of Supreme Court rulings handed down between 1989 and 1991 limiting the rights of employees who had sued their employers on the grounds of discrimination, the 1991 *Civil Rights Act* strengthened and improved federal civil rights legislation and provided for compensation in cases of intentional employment discrimination.

g) The 1993 Family and Medical Leave Act

This act introduced a form of parental leave for the first time in the United States. Companies with more than 50 employees (less than 50% of companies in the private sector) could offer employees who met certain conditions an unpaid period of leave of 12 weeks. Understandably it has been used only to a limited extent.

h) The role of the Supreme Court

Over the years the Supreme Court and federal courts have played a decisive role in establishing anti-discrimination case law and in introducing affirmative action for women by striking down state legislation that perpetuated gender-based differences. In several famous rulings (*Lucky Store* in 1994 or *Price Waterhouse* in 1990) the court imposed sanctions on companies that had developed practices that discriminated against women, imposing fines a deterrent.

As early as the 1970s the court has also played an important role in recognising that sexual harassment was a form of discrimination as defined in Part VII of the 1964 act. In France however it was and still is considered by numerous women's and feminist groups to be a form of violence (although the European Union from the outset shared the American view). The 1974 *Barnes against Train* ruling is considered to be the first case of sexual harassment in the United States. It was followed in 1976 by *Williams against Saxbe lawsuit*. In 1980 the Equal Employment Opportunity Commission (EEOC) drafted a broad definition of sexual harassment¹⁶ stating that it was a form of discrimination prohibited under Part VII of the 1964 act. In the 1986 *Meritor Savings/Vinson* suit, the Supreme Court recognised that sexual harassment was indeed a form of discrimination prohibited under the 1964 act. In 1988 it reviewed the question of an employer's responsibility and ruled more favourably on the part of employees who were victims of such acts.

Since the Californian voters voted on November 5th 1996 to put an end to racial preferences in the state affirmative action has been in decline.

¹⁶ Sexual harassment includes not only quid pro quo or sexual blackmail based on an abuse of power but also the existence of a hostile environment which includes a variety of practices which exert sexual pressure on the victim and which are discriminatory depending on the sex (sexist comments, display of pornographic images). Enshrined in civil law and not criminal law, American legislation places the burden of responsibility on the employer for any act of sexual harassment committed in his or her company and consequently this acts as an incentive to introduce preventive measures. Judges do not hesitate to impose heavy fines on those found guilty.

Although it has helped women to make advances in the labour market because of the numerous equality programmes it triggered, it has clearly not succeeded in achieving complete occupational equality, especially amongst less-qualified women. As H             states in a study for the Paris-based OFCE¹⁷ *“the cost of gender equality won by qualified women has been greater social inequality and gender inequalities amongst unqualified women”*.

i) The 2009 Pay Equity Act

It is perhaps symbolic that the first bill signed into law on January 30th 2009 by the new president of the United States elected the previous November and known as the *Lilly Ledbetter Act*, dealt with pay equality. This act was the result of a battle waged by Lilly Ledbetter, a supervisor at the Alabama Goodyear plant since 1979 who discovered in 1998 as she was retiring that she had been less well paid than her male counterparts doing exactly the same job. Invoking the 1963 and 1964 acts (cf. supra) she filed a suit in the court of Birmingham, Alabama.

After having won her case initially, the ruling was overturned when the company appealed at federal level claiming that the plaintiff should have begun her legal proceedings against the company “within 180 days after having been victim of discrimination and not years later”. The Supreme Court confirmed this ruling in 2007. After enormous protests Congress overturned the ruling. The new act now stipulates that pay discrimination exists as long as the wronged employee receives a salary which results “in all or in part” from a discriminatory pay decision taken in the past.

Thus in the United States, as in Europe, despite a broad legislative arsenal and the numerous battles fought by women to obtain occupational equality, there is still a long way to go. The question begs itself why on both continents there continues to be so much resistance to occupational equality – apparently more so than in politics and why none of the paths chosen to overcome such inequality seem to have been entirely successful.

¹⁷ Women in the US Labour Market, Observatoire fran  ais des conjonctures   conomiques (OFCE) N   2007-07, February 2007

III THE REASONS FOR RESISTANCE TO GENDER AND OCCUPATIONAL EQUALITY

There are numerous reasons for such resistance. And almost all are present on both sides of the Atlantic be they rooted in culture, corporate resistance, attitudes in trade unions, employer associations, local or national authorities or society in general.

1) Cultural reasons

This is the main reason for resistance. In Europe, even in the most progressive countries, as in the United States, the traditional patriarchal system that assigns to women the role of housewife and nurturer of children continues to dominate the collective mindset. This model has existed for millennia on every continent and in every society. The aim of this article is not to seek out the origins of this attitude. However it can be said that no society has yet succeeded in shaking off this attitude completely and some, today, under the influence of religious, especially Islamic fundamentalism, find themselves even more entrenched in this model.

While it is undeniable that the presence of women on the labour market in democratic Western societies has considerably challenged the patriarchal system, the consequences of this social upheaval have not yet been fully digested either by governments or by equality stakeholders such as the private sector and trade unions.

2) Company resistance

In Europe and to a lesser extent in the United States, corporate culture remains generally extremely male-oriented and there is still a flagrant gender division in work as mentioned above. Having a baby remains a major handicap for women in the eyes of their employers, in terms of recruitment, career promotion and pay. A small minority of companies has been trying to deal with the issue of reconciling family and professional life by offering flexible solutions to their employees. But in reality, companies do not consider occupational equality to be that important. For a company to want to implement a measure encouraging such equality, the consequences would have to offer a competitive edge or a more positive image of the company and thereby allow it to increase its popularity or indeed simply remain competitive.

Yet for 30 years, in addition to laws aimed at eradicating discrimination against women in employment, incentive measures have been introduced in both Europe and the US. In France, within the framework of a national inter-professional agreement on occupational equality drafted in 2004, the government launched a “gender equality” label¹⁸ together with a logo. The label is issued for a

¹⁸ Today 46 organisations representing more than 800,000 employees have now been granted the Occupational Equality Label. They include large corporations, associations, SMEs, local authorities in all walks of life. Examples include Peugeot Citroën, the City of Rennes, AXA France, Eau de Paris, The French Post Office (La

three-year renewable period with a check after eighteen months. The group concerned may only receive the label once it has signed the Occupational Equity Agreement.

In November 2008, the “Observatoire de la Parentalité en Entreprise” (OPE or Observatory for Parenthood at Work) launched a Parenthood Charter which has now been signed by 120 companies (by both large and small) and which identifies some 20 concrete actions which employers can undertake to help their employees reconcile their work life and their family life. These include the possibility of offering part-time work to an employee without harming their career prospects, working from home, company-funded childcare facilities, awareness raising programmes for line managers, etc...)

In May 2009 a practical guide was finalised by the Observatory On Corporate Social Responsibility (ORSE) with the support of the State Secretariat for Solidarity and the European Social Fund and the help of major companies, trade unions and the Women’s Rights Department. The aim is to help companies in their negotiations to promote occupational equality. It examines concrete issues in occupational equality such as balancing the proportion of men and women in specific jobs, access of women to decision-making positions¹⁹, equality plans for closing the pay gap, indirect discrimination, etc. It also looks at social issues which companies have to confront – the influence of preconceived ideas and stereotypes, employees’ desire to strike a better balance between work and home, the challenge of work considered to be “tough” and therefore not “suitable” for women, gender-based job segmentation and indirect discrimination. This corporate social responsibility approach, suggested by the European Commission in 2001, may offer a solution to the relative failure of legislation and regulation in gender equality and might well help reduce continued inequalities. Nevertheless, as Véronique Dutraive and Virginie Forest make clear in their study²⁰ *“a structured regulatory framework launched and supported by public, national and/or supra-national bodies is just as indispensable”*.

Similar incentive schemes have been introduced elsewhere in Europe. In Germany, the Total Equality label was created in 1994 on the initiative of large companies and government bodies. It is granted to companies whose human resources policies are geared to gender equality and which have seen increased competitiveness as a result. The underlying idea being that improvements in product and service quality can only be achieved through gender equality.

In the United Kingdom, the “Opportunity Now” programme organised by Business in the Community was introduced in 1991 and today 340 companies participate, united in the belief that equal opportunities are good for business. The results have been encouraging. After five years the

Poste), ILO (International Language Office) Association pour l’emploi, Etape, Véolia, Propriété Aquitaine, Airbus France, Airbus SS, Astrium, Services Financières-Ville de Paris, Barbin Consultancy, EADS France, etc.)

¹⁹ Recent studies have established a correlation between the presence of women in decision-making posts and company performance (McKinsey and Co. : *Women Matter : equality, a performance tool in companies*, 2007, survey conducted in 87 European listed companies) ; study by the American group Catalyst in 2007 which looked at 520 American companies in the Fortune 500.

²⁰ *Professionnelle hommes/femmes : entre impulsion législative et pratique de RSE* by Véronique Dutraive and Virginie Forest, Université Lumière Lyon 2, Laboratoire d’économie de la firme et des institutions (LEFI). Their study was based on work by T. Veblen and J.R. Commons in the United States

percentage of women in the top ranks of participating companies had reached 30% while the average was 11%.

In the United States the state also helps companies to introduce occupational equality. The Department of Labour recently launched an interactive website called "*First Step Employment Law Advisor*" designed to help employers and employees respect the US Labour Code. For over 20 years, policies have been introduced to help change attitudes and practices in companies.

Associations organise awareness raising workshops on workplace gender equality. Others use qualitative and quantitative assessments in occupational equality and closely examine all human resources policies. The *Catalyst* group, founded in 1962 with the aim of helping women achieve their full professional potential, also helps employers to make the most of their female employees, encouraging them to introduce innovative solutions to reconcile private and professional life. Every year the *Catalyst Awards* are presented to companies that have introduced outstanding pro-women policies.

Despite all this hard work and occasional financial incentives, it is clear that in Europe and the United States the corporate world has not yet fully gauged the far-reaching behavioural changes taking place, not only amongst women but also, gradually, amongst men.

3) Resistance amongst the Social Partners

a) The role of women in trade unions

Trade unions and employer organisations in Europe and the United States remain dominated by men although the average rate of union membership amongst women is 40% in the EU, with enormous variations from country to country (87% in Denmark, 85% in Sweden, 10% in France). In the US, the figure stands at 11% (over all 12.4% of which 36.8% in the public sector and 7.6% in the private sector). Yet the general trend since the mid 1950s has been a drop in union membership.

Very few major unions are headed by women. In Europe a survey carried out by the ETUC in March 2008 revealed that although rises in union membership over the last few years in the EU were mainly the result of women joining, their presence in top-ranking positions remains extremely rare and there has been very little change or improvement recently. In France, the main employer organisation, the MEDEF recently appointed a woman, Laurence Parisot at its head for the first time ever. A major trade union, the CFDT was headed for several years by Nicole Notat who was then replaced by a man. Sweden has had a woman president of its Swedish Trade Union Confederation since 2000 - Wanja Lundy-Wedin.

The situation is identical in the United States where union culture remains male-dominated even as unions continue to lose their influence, to wit - the AFL-CIO which broke into two separate unions in 2005. The role of American unions and the entire unionisation procedure is radically different from the situation in Europe and especially France. Many of the rights that US workers enjoy are

dependant on company agreements negotiated by unions. Women have been able to claim their rights in the workplace far more thanks to legal action than to trade union lobbying. The *Employee Free Choice Act*, which is being debated in Congress, will make it easier to join a union in the United States and should also provide a better framework for negotiations while toughening sanctions against employers who break the law.

On both sides of the Atlantic, union activism, like political activism, requires a lot of time and is based on a deeply-entrenched system adapted to the rhythm of a man's life – long hours, evening meetings, lengthy debates, numerous actions, all far too often incompatible with the timetable of a working women with children.

It is hardly surprising therefore that the problems women face in the workplace have for years been ignored by trade unionists. Furthermore it should not be forgotten that these unions, both in Europe and the US, have their roots in a working class tradition that rejected and refused to recognise working women. No trade union, with a few exceptions (such as the CFDT in France) has made occupational equality a priority demand. Employer organisations have been no more interested in the subject than the unions.

Nevertheless, recently in Europe, as a result of the inexorable presence of women in the workplace and EU recommendations (cf. infra), trade union organisations have now begun to change and have allowed women to occupy high-ranking posts, mostly as a result of gender quotas imposed on their top ranks. (In France, the CFDT and the CGT have opted for "parity". Unions have now also begun to include equality issues in their studies and demands.

It appears that the presence of women in the decision-making ranks of trade unions and at the negotiating table when the social partners meet has made it possible to raise equality issues such as working hours, childcare facilities, equal pay, sexual harassment etc. These are all subjects that male leaders are not accustomed to.

Since 2007 the ETUC²¹ has for the first time since its creation in 1973 been headed by a woman, Wanja Lundby-Wedin, the president of the Swedish Trade Union Confederation. It introduced an equality plan in 1999 which was updated for the period 2003-2007 and is based on three areas. Ensuring female representation in all decision-making bodies, incorporating gender equality in all union policies (gender mainstreaming), organising wide-scale campaigns to promote pay equality. However a disappointing mid-term assessment prompted the ETUC to call on its member unions to speed up implementation of the plan.

Although some trade unions (the Danish LO, the Dutch FNV, the Austrian OGB, the Italian CGIL, the French CFDT and the Belgian FGFB) have introduced gender mainstreaming into their action, they still remain the minority. Implementation also depends on the type of industrial relations which exist in a given country. In some countries unions tend towards a corporatist approach, defending members

²¹ Created in 1973, the ETUC represents 82 trade unions from 36 European countries (more than the 27 member states of the EU) and 12 European union federations with a total of 60 million members. Its vocation is to create a strong social dimension in the EU to guarantee the welfare of all EU citizens.

rights in their own industry while others adopt a more confrontational approach. It also depends on the effectiveness of collective bargaining as a tool and the laws in force in each country.

b) Negotiating occupational equality agreements

In the European Union's 2002/73 directive on social dialogue, it called on member states to "take appropriate measures to encourage dialogue between the social partners in order to promote equal treatment of women and men...and to conclude agreements establishing rules for non-discrimination". In 2005 the social partners signed an EU gender equality framework for action which was based on an integrated approach.

In Germany, Spain and Italy in particular, company collective agreements included occupational equality on the list of subjects for negotiation. In France, a national inter-professional agreement on occupational equality was signed on March 1st 2004 by all French trade unions and employer organisations. The agreement recalls the economic and social need to promote gender equality in the workplace and makes a commitment to concrete action such as changing attitudes which hinder equality, encouraging more girls to choose scientific and technological studies and careers and ensuring that recruiters only assess skills and qualifications, etc.

The 9th May 2001 and 23rd March 2006 laws which make annual negotiations on occupational equality compulsory have meant that in 2009 35 different sectors of the economy had signed agreements while since 2001 159 company agreements have been signed. Almost all of these agreements tackle parenthood, increasing the gender balance in employment, the fight against stereotypes and helping women with their career prospects and promotion.

Nevertheless, as Anita Ardura and Rachel Silvera point out in an article published in the IRES review²² *"despite some improvements encouraged by the prompting of different stakeholders (the EU, member states and trade unions themselves), collective bargaining on equality still remains extremely limited in all countries and is still not yet a fully-fledged part of union tradition"*. And yet they conclude that this approach represents *"one of the major challenges for unions if they want to encourage occupational equality and equality in other spheres of life. Equality will remain a vain hope without full involvement of the unions but equally, the future of trade unions depends on their full acknowledgement of the role of women in and outside the workplace"*.

4) Resistance from the state and society in general

One of the reasons why occupational equality has been so hard to introduce in Europe and the United States is that the state and society in general, with the exception of some EU member countries like Sweden or the Netherlands, have for many years either consciously or unconsciously

²² *L'égalité hommes/femmes : quelles stratégies syndicales ?* by Anita ARDURA and Rachel SILVERA, *Revue de l'IRES*, n° 37 - 2001/3

refused to recognise the social consequences of the upheaval created by the massive influx of women onto the labour market.

Generally speaking, particularly in Southern EU member states but also in Germany and for cultural reasons in the United States, governments at national and local level have not launched a public debate on these far-reaching changes. Economic science has continued to function on an asexual basis ignoring differences in the constraints on and behaviour of women and men despite the fact that the involvement of women in the economy has been a major factor in increases in economic performance throughout developed countries.

Over time governments have introduced policies to help women in the workplace but they have not at the same time earmarked sufficient resources to allow them to reconcile their work life and their responsibilities at home. Indeed, many of the measures introduced by numerous EU member states such as parental leave or other benefits which could be likened to “maternity pay” have not always favoured gender-based occupational equality.

The crucial question of childcare for young children and care of young children and dependants in general has not yet been satisfactorily settled in any of the EU countries or the US. In the United States childcare is considered to be a matter of private choice and it is the private sector that provides childcare facilities, very often at a very high cost thereby making it unaffordable for many families even though it does also offer some relatively inexpensive childcare services of varying degrees of quality. In Europe the issue remains open in many countries, especially Germany and the countries of Eastern Europe although local and national governments are more involved than in the US. Even in a country like France which like Sweden is an exception in the area of childcare with a large (but as yet insufficient) network of crèches and kindergartens which accept all children between the ages of 3 and 6, women still have huge difficulties in finding suitable childcare. The question “who should look after a young child?” as Jacqueline Laufer pointed out ²³ *“has become crucial to occupational equality. Who should pay for childcare and care of dependants? Is it the family, the state, the employer, the market? These different possibilities inevitably lead to the question of who should care for children and the elderly. It also means examining the effects of each of all possible configurations on equal opportunities for women and men”*.

Although companies, unions and government bodies are now beginning to gauge the scope of the issues thrown up by the employment of women, men have so far done little to change except perhaps slightly amongst the younger generation. Indeed all recent surveys prove that women continue to carry out 80% of domestic and family chores and responsibilities alone.

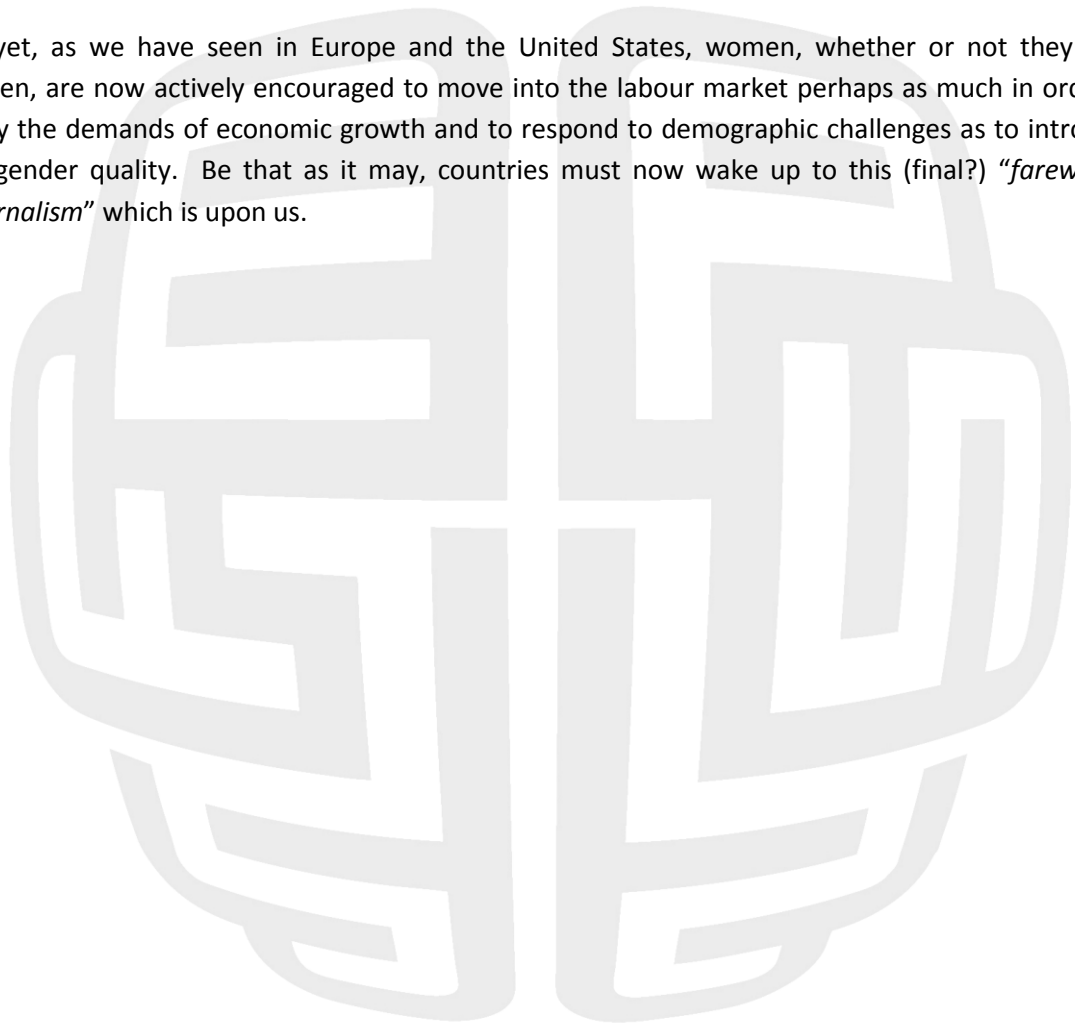
So it is almost entirely up to women to attempt to reconcile their professional and private lives meaning that from the very outset a young woman with the same qualifications as a young man is handicapped. The same applies in the US. Only the highest qualified women who can afford to pay for childcare services (generally provided by women) *“become women who are like men”* as the above-mentioned Ann Shola Orloff puts it.

²³ *Entre égalité et inégalités : les droits des femmes dans la sphère professionnelle*, by Jacqueline Laufer, groupe HEC, in *L'Année sociologique*, PUF, 2003

American and European societies and perhaps first and foremost women (for lack of time?) have not yet mustered their efforts to bring occupational equality forwards don't have the time! The crushing weight of stereotypes, the influence of the patriarchal social model and male domination of decision-making in politics and the economy have all meant that it has not been possible to recognise and act more quickly upon this irreversible trend which so affects the lives of women, men and children, indeed which effects the overall balance and welfare of society in its entirety.

Although progressive European governments have more often than not moved in the right direction, they have not so far been able to reverse the underlying trends of traditional social mindsets.

And yet, as we have seen in Europe and the United States, women, whether or not they have children, are now actively encouraged to move into the labour market perhaps as much in order to satisfy the demands of economic growth and to respond to demographic challenges as to introduce true gender quality. Be that as it may, countries must now wake up to this (final?) *"farewell to maternalism"* which is upon us.



CONCLUSIONS

Awareness of this fundamental change in developed societies in Western Europe and North America is very recent which could in part explain why equality policies or affirmative action applied only to companies have not produced the expected results.

Today in Europe and the United States, although the social systems and the paths chosen to bring about gender equality are very different, it seems that new aspirations are emerging especially amongst young women and young working couples who want to build a different lifestyle for themselves based on a better balance between work and their private lives and a fairer distribution of domestic chores and child-raising between women and men.²⁴

These new aspirations have not led to the disappearance of demands for equal pay, better career opportunities, promotion, occupational equality and an end to the glass ceiling. Quite the opposite. The moral, political and economic demand for occupational equality between women and men has thrown down two major challenges on both sides of the Atlantic.

The first is to ensure that all existing laws and regulations concerning gender equality are fully applied and respected by all stakeholders. In other words to move from words to action.

The second is to ease this transition which, as we have seen, is difficult because of the various forms of resistance blocking it. At **the European level** it is felt that reconciling family life and work for women and men is an essential approach²⁵. The European Commission's 2009 report (cited above) recalls that one of the major initiatives in 2008 for achieving occupational equality between women and men was the adoption of several reconciliation measures, such as the extension of maternity leave from 14 to 18 weeks with no loss of pay. Some women's groups have challenged the equalitarian nature of this provision.

Furthermore a Commission report has monitored the development of childcare facilities in member states and has concluded that most of the member states will not reach the Barcelona targets by 2010 (namely providing childcare for 90% of children between 3 and the age of compulsory schooling and for at least 33% of children under the age of 3). Some measures have been taken by some member states as for example increasing the number of childcare facilities (Germany, UK, the Netherlands) offering more advantageous forms of parental leave especially for fathers (Sweden, Germany, Greece, Lithuania and Spain) and organising awareness raising activities on the role of fathers (Slovenia).

Lastly, after two phases of consultation undertaken by the Commission, the social partners have begun negotiations on leave for family reasons other than maternity. After the two consultation phases on the reconciliation of home and work life which involved the European social partners, a

²⁴ Cf. . *Le deuxième âge de l'émancipation féminine. La société, les femmes et l'emploi*, by Dominique Médan et Hélène Périvier, Le Seuil, coll. *La République des idées*, 2007, 112p For the authors the present system is "not only unfair but absurd"

²⁵ see the FEPS website, January 2009 study "The role of Women in the EU – a Relentless Challenge" by Ghislaine Toutain.

first Community-level framework agreement on parental leave was concluded in December 1995. 15 years later on June 18th 2009 a new framework agreement was signed by the social partners, which extended the length of parental leave from three to four months for each parent.

This work on the part of the European Union undertaken to ensure occupational equality echoes Ann Shola Orloff's assessment when she writes *"whatever the system, one of the solutions to the problem of reconciliation between private life and work on the one hand and economic dependency of women on the other, is perhaps to be found in a universal model of care...Such a change would require changes in the workplace in order to meet the essential need of parents to have more time to look after their young children, it would require improvements in the parental leave system and access to childcare services. It is furthermore essential to encourage the involvement of men in the care of their children and it is just as essential to encourage women to take up paid jobs while continuing to allow them to fulfil their role as mothers"*.

In fact what is needed today on both sides of the Atlantic is a new **blueprint for society** involving all women and men. It implies a new **internal structure or organisation of companies** (in terms of working hours, more flexible leave and adaptation of working hours for women and men, etc) which women have already begun to bring about. It implies the creation of a high quality childcare system, the recognition of a right to childcare, true equal opportunities especially in the area of education, training and career choices – such as scientific and technological careers for girls, as in the United States, leading to true gender mixing in the workplace and the end of the glass ceiling as well as new forms of time management in towns and cities.

Hence in Europe we have seen the emergence of "time offices" in large cities, especially in Italy and in Scandinavian countries and gradually and more recently in France. These offices harmonise the varying daily or weekly schedules of employees. It is perhaps too early to be able to assess the results.

This type of blueprint for a new society means above all else that all those involved can and must contribute to changing the way in which our societies function and are structured. This includes national and local authorities, companies, trade unions, associations and elected representatives. Against this new, more constructive backdrop, the occupational equality laws and regulations will become more effective and will be perceived, especially by companies, more as growth driver than bureaucratic red tape.

For both Europe and the United States this is a veritable **cultural revolution** the realisation of which will be arduous but has already begun. It is about power sharing in the world of work and in politics - power sharing to achieve true social gender equality at every level. This is a modern perspective, part of a new way of structuring the life of women and men.

It is said that times of economic crisis, such as those the world is experiencing at the moment, are not auspicious for qualitative progress. This is not always the case. Sometimes they make it possible to overturn taboos and stereotypes handed down from times gone by more quickly and so usher in a new era. Why should this not be the case today?

The seminar organised in Boston on October 1st 2009 by the FEPS with the support of the Jean Jaurès Foundation and the Boston University Centre for International Relations will offer an opportunity for American and European women to lay the groundwork for this new, fairer, better balanced and more democratic society.

As Brigitte Grésy wrote in her above-cited report “it is the diversity of both men’s and women’s talents which must prevail and not the specific nature of talents as attributed to women and men by society. And this must be set in a broader, international context because the fight for human rights in the 21st century is first and foremost the fight for women’s rights throughout the world”. European and American women cannot but agree on this endeavour.

