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(En)gendering
the Convention:
Women and the Future of
the European Union

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**(En)gendering the Convention:
Women and the Future of the European Union**

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This paper is issued from the
“EUI Convention Working Group –
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Bruno de Witte and Dr. Miriam Aziz, as an academic
response to the Convention established under the Laeken
Declaration of December 2001 to facilitate dialogue on the
eventual setting up of an EU Constitution.

INTRODUCTION¹

Sex equality has always been an item on the agenda of the European Community. Since the inception of the Treaty of Rome advances have been made, notably in the area of equal rights and equal treatment for women and men in employment. Furthermore, since the introduction of initial measures such as the requirement to reward equal work by men and women with equal pay (Article 141 EC), which was designed to enhance the functioning of the internal market (and so was motivated by considerations of economy and competition rather than gender justice), the pursuit of equal treatment between men and women has rapidly developed into a social policy objective in its own right. In addition, gender mainstreaming initiatives which aim to evaluate the gender implications of policy-making are also a welcome development (Articles 2 and 3-2 EC).² Undoubtedly, changes are taking place which will ameliorate the quality of women's lives. That said, gender equality in Europe is not complete and further improvements are necessary to tackle female poverty, persisting inequalities in employment, gender pay gaps and the horizontal and vertical sectorisation of the labour market, together with the difficulties experienced by both men and women in balancing work and family life. The development of the EU's activities in the economic sector needs, therefore, always to be positioned alongside a broader commitment to, and consideration of, human development, social justice and equality.

There is no better moment than the present to address the state of gender relations within the Union and to propose ways in which they may be improved. The EU is poised at the crossroads of profound change. Seeking increased legitimacy in the eyes of its citizens, facing the challenges of enlargement from 15 to 25 member states and buffeted by the winds of globalisation, the Union has arrived at a period of constitutional reflection, renewal and change. Within this climate of uncertainty and opportunity, the decision of the European Council, as expressed in the Laeken Declaration on the Future of the European

¹ This policy paper is developed from a seminar held by the Robert Schuman Centre for Advanced Studies at the European University Institute, Florence, on 19 November 2002, hosted jointly by the Gender Studies Programme and the EU's Working Group on the Constitutional Convention. In addition to the paper's authors, the speakers included Agnès Hubert, adviser to the Women's Rights Committee of the European Parliament, former head of the Equal Opportunities Unit of the European Commission and member of the Forward Studies Unit. We would like to thank all the participants in the seminar for their contributions and also Professor Jo Shaw and Professor Helen Wallace for their helpful comments on a previous draft.

² For a thorough review of gender mainstreaming in European public policy see Beveridge & Shaw (2002).

Union,³ to convene a Convention whose task is to deliberate upon the future development of the EU, presents an ideal occasion to assess the implications of constitutional change for women in the Union and the important contribution women can, and should, make to the debate on the Union's future. A gendered reading of the Convention process is highly necessary in order that important questions about participation, representation, transparency, solidarity, citizenship, equality and the protection of fundamental rights – all of which harbour a gender dimension – do not go unexplored and unchallenged from a gender perspective.

This paper is a contribution to the debate. It assesses the role and work of the Constitutional Convention from a gendered standpoint exploring three dimensions: political, legal and social. The first part of the paper addresses the Convention as a political process, demonstrating the extent and nature of women's participation and representation in its deliberation and decision-making procedures and argues for a stronger practical manifestation on the part of the Union of its commitment to parity democracy. Secondly, the legal dimension of the Convention's approach towards gender equality is examined within the framework of the elaboration of a draft Constitutional Treaty for the EU and the place of sex equality guarantees within this, notably those contained in the Charter of Fundamental Rights. The third section of the paper explores the social dimension of constitutional revision, noting the gender requirements of the development of a concept of social citizenship and the need for a greater *de facto* commitment towards gender mainstreaming throughout EU policy-making. The paper concludes with a number of policy recommendations.

1. THE POLITICAL DIMENSION OF GENDER EQUALITY

The process of the Constitutional Convention has been advertised as a widely consultative and participatory exercise aimed at inclusion and dialogue (see Shaw, 2002a). It is underpinned by two documents – the Laeken Declaration and the Charter of Fundamental Rights – which have acted as building-blocks in the dialogic process and which, importantly, address the Union's commitment to gender equality and participatory democracy. The special place accorded to the Charter in the debate on constitutional revision is considered in more depth in section 2 below. Suffice to state at this stage that within its Chapter III on Equality it sets out the principle of equality before the law (Article 20), the non-discrimination principle (Article 21), and the principle of equality between men and women (Article 23). The Laeken Declaration invokes the democratic challenge facing the EU and the acknowledgement that re-thinking the Union is

³ Laeken Declaration on the Future of the European Union, Annex I to the Conclusions of the Laeken European Council, 14-15 December 2001, SN 300/1/01 REV 1.

a process which must involve citizens and meet their expectations. Bringing the EU closer to its demos by improving and monitoring its democratic legitimacy and transparency is a theme which runs as a *leitmotif* through the Declaration and appears to require above all else a simplification of the Treaties. To this end the preliminary draft of a Constitutional Treaty drawn up by the Praesidium and presented by the President at the Plenary session on 28 October 2002 (CONV 369/02) and the draft Articles 1-16 presented on 6 February 2003 (CONV 528/03) are a welcome exercise in clarification of the constitutional basis of the EU. Furthermore, the draft text of 6 February 2003 provides space in Article 5 for inclusion of the Charter of Fundamental Rights and, therefore, can be seen to envisage the principle of equality between men and women at the level of a constitutional right. Moreover, in Title VI of the draft of 28 October 2002 which concerns the democratic life of the Union, Articles 33 and 34 provide respectively for the principles of democratic equality ('all Union citizens are equal vis-à-vis its institutions') and participatory democracy ('the institutions are to ensure a high level of openness, permitting citizens' organisations of all kinds to play a full part in the Union's affairs').

There is, however, a distinct gap between this rhetoric of gender equality, democracy and participation and the reality of the Convention process. Despite the articulation in textual form of the twin principles of equality and participatory democracy, it is notable that the involvement of women participants in the Convention itself is relatively small and low-level (see Tables 1 and 2 below). This denotes a democratic deficit in the debate on EU constitutional reform which paradoxically coincides with the increasing visibility on national political agendas of initiatives regarding parity, quotas and gender mainstreaming.⁴ These are emerging in recognition of the fact that national assemblies are basically unrepresentative of the major socio-economic components of society, to the point that political representation has been said to have an 'aristocratic character' (Manin, 1996), and the composition of parliaments to be biased (Norris and Lovenduski, 1995). That this bias is identifiable at the EU level too, despite the spirit and rhetoric of inclusion which envelops the Convention process, the texts which underpin it and are now being produced by it, is disappointing. Moreover, the gender gap looks decidedly at odds with Council Recommendation 96/694 EC on the balanced participation of women and men in the decision-making process and Commission Decision of 19 June 2000 which addresses the gender balance of committees and expert groups within the Commission and contains a commitment to achieve a percentage of 40% of women members.⁵

⁴ See the individual member state studies in Beveridge, Nott and Stephen, 2000.

⁵ Council Recommendation 96/694/EC of 2 December 1996 on the balanced participation of women and men in the decision-making process, OJ 1996 L 319/11; Commission Decision of

Table 1

The composition of the Convention by sex (figures for 21 October 2002)⁶

Presidency	President: Mr Valéry Giscard d'Estaing	Vice-Presidents: Mr Giuliano Amato and Mr Jean- Luc Dehaene
	FEMALE MEMBERS	FEMALE ALTERNATES
Representatives of the Heads of State or Government of the Member States	3/15 20%	3/15 20%
Representatives of the National Parliaments	3/30 10%	4/30 13,33%
Representatives of the European Parliament	5/16 31,25%	7/16 43,75%
Representatives of the European Commission	0/2 0%	0/2 0%
Representatives of the Governments of the accession candidate countries	3/13 23,08%	1/13 7,69%
Representatives of the National Parliaments of the accession candidate countries	3/26 11,54%	9/26 34,62%
Total	17/105 16,19%	24/105 22,85%
Observers	COMPOSITION	PERCENT
Committee of the Regions	2/6	33,3%
Economic and Social Committee	1/3	33,3%
European Social Partners	0/3	0%
European Ombudsman	0/1	0%
Total	3/13	23%

19 June 2000 relating to gender balance within the committees and expert groups established by it, OJ 2000 L 154/34.

⁶ The composition of the Convention is constantly changing with new nominations. The figures in Tables 1, 3 and 5 represent the gender balance on 21 October 2002 and those in Tables 2, 4 and 6 on 19 February 2003. While the difference is not great with regard to the members themselves, the number of female alternates has been reduced notably among the candidate countries and there has been a cut too in the number of women observers. The overall number of female members has risen by one (up to 18/105 or 17.14%). This change has resulted from two women from Latvia being introduced as substitute representatives of the government and the national parliament, and a Turkish male parliamentary representative replacing a previous female nominee. Among the alternates the number of women has been reduced by three overall (down to 21/105 or 20%). This change comprises the loss of a female Swede among the representatives of the heads of state or government and the loss of three female representatives of the national parliaments of the accession states (Latvia, Lithuania and Slovenia) but with the addition of a Czech female representative of the government. Among the observers there is a loss of one woman representing the Committee of the Regions reducing the total to 2/13 or 15.38%. There remain just two women in the Praesidium.

Table 2

The composition of the Convention by sex (figures for 19 February 2003; changes are highlighted in bold)

Presidency	President: Mr Valéry Giscard d'Estaing	Vice-Presidents: Mr Giuliano Amato and Mr Jean- Luc Dehaene
	FEMALE MEMBERS	FEMALE ALTERNATES
Representatives of the Heads of State or Government of the Member States	3/15 20%	2/15 (-1) 13,33%
Representatives of the National Parliaments	3/30 10%	4/30 13,33%
Representatives of the European Parliament	5/16 31,25%	7/16 43,75%
Representatives of the European Commission	0/2 0%	0/2 0%
Representatives of the Governments of the accession candidate countries	4/13 (+1) 30,77%	2/13 (+1) 15,38%
Representatives of the National Parliaments of the accession candidate countries	3/26 11,54%	6/26 (-3) 23,08%
Total	18/105 (+1) 17,14%	21/105 (-3) 20%
Observers	COMPOSITION	PERCENT
Committee of the Regions	1/6 (-1)	16,67%
Economic and Social Committee	1/3	33,3%
European Social Partners	0/3	0%
European Ombudsman	0/1	0%
Total	2/13 (-1)	15,38%

Source: own elaboration from primary data.

Tables 1 and 2 reveal the extent of women's under-representation in the Convention. As of February 2003 only 18 out of 105 (17.14%) members of the Convention are women. Of these, women comprise 20% (3/15) of the representatives of the heads of state or government of the member states; 10% (3/30) of the representatives of the national parliaments; 0% (0/2) of the representatives of the European Commission; 30.77% (4/13) of the representatives of the governments of the accession candidate countries; and 11.54% (3/26) of the representatives of the national parliaments of the accession states. The highest percentage of female representatives comes not surprisingly from the European Parliament (31.25% or 5/16) reflecting the relatively high

percentage of women MEPs.⁷ Among the observers at the Convention (6 from the Committee of the Regions, 3 each from the Economic and Social Committee and the European Social Partners, together with the European Ombudsman) there are only two women (15.38%). Within the 12 member Praesidium which directs the agenda of the Convention there are just 2 women (16.7%) and there are no women among the three man Presidency. Not surprisingly, the absence of women at the top merely perpetuates general employment patterns.

Tables 3 to 6 below shed some light on the individual member states and accession countries' choice of male and female representatives. This rather confounds expectations that those countries with relatively good records of female participation in their national assemblies or at least constitutional commitments to securing this end, should score well in the number of female representatives they sent to the Convention.⁸ For example, France, despite its constitutional commitment to gender parity in public office, has sent no women as members and just one alternate. This perhaps is not so astonishing since France continues to have one of the lowest figures in the EU of female members in the national assembly (only 12.1%). What is more surprising is that a country like Denmark, that has a fairly large representation of women in the national parliament (38%) has sent no women as members, and only 2 alternates from the European Parliament. Germany is another example of a member state which, despite a relatively high percentage of women members in the national assembly (32.2%), has sent a much lower number of women in percentage terms to the Convention (16.6%). Many other member states mirror this pattern, Sweden, Finland, and the Netherlands having sent in proportion less women to the Convention than they have in their national assemblies (45%-33.3%, 36.5%-25%, 34%-25%, respectively). On the contrary, five countries do better in terms of female representation at the Convention than at the domestic level, namely: Greece (33.3-8.7%), the United Kingdom (33.3-17.9%), Italy (20-9.8%), Portugal (25-19.1%), and Belgium (25-23.3%).

Significantly too, women feature relatively strongly amongst the representatives of the accession countries. Latvia, with two out of three female representatives (66.6%), has sent a much higher proportion of women than in its national parliament (18%). Bulgaria, Poland, Slovakia, the Czech Republic, Cyprus and Romania, all sending one out of three female representatives (33.3%), also score more highly than at the domestic level (26.2%, 20.2%,

⁷ Since the European parliamentary elections in June 1999 there are 194 out of 626 women MEPs, a figure which represents 31% of the total membership (see Appendix 1 for a breakdown of the composition of the European Parliament by country and sex). On the capacity of this 'critical mass' to effect change see Freedman (2002).

⁸ For a breakdown of the number of women in national parliaments in the EU member states and accession countries see Appendix 2.

17.3%, 17.0%, 10.7%, 10.7% respectively). Conversely, Estonia has sent no female representatives to the Convention while having a figure of 17.8% of women in the national parliament. Hungary and Turkey, also with no female representatives at the Convention, simply mirror their poor rates of female parliamentary participation at the domestic level (9.1% and 3.6% respectively).

Table 3
The Composition of the Convention by Country and Sex (15 EU Member States) (figures for 21 October 2002)

COUNTRIES	Representatives of the Heads of State or Government of the Member States		Representatives of the National Parliaments		Representatives of the European Parliament		TOTAL	
	FEMALE MEMBERS (1)	ALTERNATES (1)	FEMALE MEMBERS (2)	ALTERNATES (2)	FEMALE MEMBERS	ALTER-NATES	FEMALE MEMBERS	ALTER-NATES
België/Belgique	0	0	0	1	1	1/3	1/4	25% 1/3 33.3%
Danmark	0	0	0	0	0	2/2	0/4	0% 2/5 40%
Deutschland	0	0	0	0	1/3	0	1/6	16.6% 0/4 0%
Ellas	0	0	1	0	0	0	1/3	33.3% 0/3 0%
España	1	0	0	0	0	0	1/4	25% 0/4 0%
France	0	1	0	0	0	1/2	0/4	0% 2/5 40%
Ireland	0	0	0	0	0	0	0/3	0% 0/4 0%
Italia	0	0	0	0	1/2	1	1/5	20% 1/4 25%
Luxembourg	0	0	0	1	0	0	0/3	0% 1/3 33.3%
Nederland	0	0	0	0	1	0	1/4	25% 0/3 0%
Österreich	0	0	0	1	0	1/2	0/4	0% 2/5 40%
Portugal	0	0	1	0	0	1/2	1/4	25% 1/5 20%
Suomi/Finland	1	0	0	1	0	1/2	1/4	25% 2/5 40%
Sverige	1	1	0	0	0	0	1/3	33.3% 1/3 33.3%
UK	0	1	1	0	1/3	0/2	2/6	33.3% 1/5 20%
Total	3/15 20%	3/15 20%	3/30 10%	4/30 13.33%	5/16 31.25%	7/16 43.75%	11/61 18%	14/61 22.95%

Source: own elaboration from primary data.

Table 4
The Composition of the Convention by Country and Sex (15 EU Member States) (figures for 19 February 2003; changes are highlighted in bold)

COUNTRIES	Representatives of the Heads of State or Government of the Member States				Representatives of the National Parliaments		Representatives of the European Parliament		TOTAL	
	FEMALE MEMBERS (1)	ALTERNATES (1)	FEMALE MEMBERS (2)	ALTERNATES (2)	FEMALE MEMBERS	ALTERNATES	FEMALE MEMBERS	ALTERNATES	FEMALE MEMBERS	ALTERNATES
Belgie/Belgique	0	0	0	1	1		1/4	25%	1/3	33,3%
Danmark	0	0	0	0	0	2/2	0/4	0%	2/5	40%
Deutschland	0	0	0	0	1/3	0	1/6	16,6%	0/4	0%
Ellas	0	0	1	0			1/3	33,3%	0/3	0%
España	1	0	0	0	0	0	1/4	25%	0/4	0%
France	0	1	0	0	0	1/2	0/4	0%	2/5	40%
Ireland	0	0	0	0	0	0	0/3	0%	0/4	0%
Italia	0	0	0	0	1/2	1	1/5	20%	1/4	25%
Luxembourg	0	0	0	1			0/3	0%	1/3	33,3%
Nederland	0	0	0	0	1		1/4	25%	0/3	0%
Osterreich	0	0	0	1	0	1/2	0/4	0%	2/5	40%
Portugal	0	0	1	0	0	1/2	1/4	25%	1/5	20%
Suomi/Finland	1	0	0	1	0	1/2	1/4	25%	2/5	40%
Sverige	1	0 (-1)	0	0			1/3	33,3%	0/3	0%
UK	0	1	1	0	1/3	0/2	2/6	33,3%	1/5	20%
Total	3/15	2/15	3/30	4/30	5/16	7/16	11/61	18%	13/61	21,31%
	20%	13,33%	10%	13,33%	31,25%	43,75%				

Source: own elaboration from primary data.

Table 5
The Composition of the Convention by Country and Sex (the accession candidate countries) (figures for 21 October 2002)

COUNTRIES	Representatives of the Governments of the accession candidate countries		Representatives of the National Parliaments of the accession candidate countries		TOTAL	
	FEMALE MEMBERS (1)	ALTERNATES (1)	FEMALE MEMBERS (2)	ALTERNATES (2)	FEMALE MEMBERS	ALTERNATES
Κύπρος (Cyprus)	0	0	1	1	1/3	33,3% 1/3
Malta	0	0	0	1	0/3	0% 1/3
Magyarország (Hungary)	0	0	0	0	0/3	0% 0/3
Polska (Poland)	1	0	0	2	1/3	33,3% 2/3
România (Romania)	1	0	0	0	1/3	33,3% 0/3
Slovensko (Slovakia)	0	0	1	1	1/3	33,3% 1/3
Latvija (Latvia)	0	0	0	1	0/3	0% 1/3
Eesti (Estonia)	0	0	0	1	0/3	0% 1/3
Lietuva (Lithuania)	0	0	0	1	0/3	0% 1/3
България (Bulgaria)	1	1	0	0	1/3	33,3% 1/3
Česká republika (Czech Republic)	0	0	0	0	0/3	0% 0/3
Slovenija (Slovenia)	0	0	0	1	0/3	0% 1/3
Türkiye (Turkey)	0	0	1	0	1/3	33,3% 0/3
Total	3/13	1/13	3/26	9/26	6/39	10/39
	23,08%	7,69%	11,54%	34,62%	15,4%	25,6%

Source: own elaboration from primary data.

Table 6
The Composition of the Convention by Country and Sex (the accession candidate countries) (changes are highlighted in bold)

COUNTRIES	Representatives of the Governments of the accession candidate countries				Representatives of the National Parliaments of the accession candidate countries				TOTAL	
	FEMALE MEMBERS (1)	ALTERNATES (1)	FEMALE MEMBERS (2)	ALTERNATES (2)	FEMALE MEMBERS	ALTERNATES	FEMALE MEMBERS	ALTERNATES		
Κύπρος (Cyprus)	0	0	1	1	1/3	33,3%	1/3	33,3%	1/3	33,3%
Malta	0	0	0	1	0/3	0%	1/3	33,3%	1/3	33,3%
Magyarország (Hungary)	0	0	0	0	0/3	0%	0/3	0%	0/3	0%
Polska (Poland)	1	0	0	2	1/3	33,3%	2/3	66,6%	2/3	66,6%
România (Romania)	1	0	0	0	1/3	33,3%	0/3	0%	0/3	0%
Slovensko (Slovakia)	0	0	1	1	1/3	33,3%	1/3	33,3%	1/3	33,3%
Latvija (Latvia)	1 (+1)	0	1 (+1)	0 (-1)	2/3	66,6%	0/3	0%	2/3	66,6%
Eesti (Estonia)	0	0	0	1	0/3	0%	1/3	33,3%	1/3	33,3%
Lietuva (Lithuania)	0	0	0	0 (-1)	0/3	0%	0/3	0%	0/3	0%
България (Bulgaria)	1	1	0	0	1/3	33,3%	1/3	33,3%	1/3	33,3%
Česká Republika (Czech Republic)	0	1 (+1)	0	0	0/3	0%	0/3	0%	0/3	0%
Slovenija (Slovenia)	0	0	0	0 (-1)	0/3	0%	0/3	0%	0/3	0%
Türkiye (Turkey)	0	0	0 (-1)	0	0/3	0%	0/3	0%	0/3	0%
Total	4/13	2/13	3/26	6/26	7/39	8/39	17,95%	20,51%		

Source: own elaboration from primary data.

Having observed the factual gender imbalance in the Convention the question then needs to be addressed as to why this matters and what might be its effects? Arguments for a more equal gender balance in institutional decision-making fall broadly into two categories, those based on *rights* and those on *utility*, although these two approaches are not necessarily mutually exclusive. Viewed within the framework of individual civil and political rights, women – like men – are entitled to be politically active and present in national and European decision-making processes in the name of democratic equality and participatory democracy (as per Articles 33 and 34 of the draft Constitutional Treaty). From a utilitarian perspective, there exist positive benefits in a more gender balanced assembly as what results from this diversification of the *res publica* is a greater capacity for change in terms of a renewal of the political culture and a substantive change in legislative output. In addition the equilibrium of sex composition of legislative assemblies is important because it carries an improvement of the working conditions related to minority and majority attitudes, an impact on the parliamentary and policy-making processes, and overall better representation when measured as issue agreement between voters and members of parliament.

Thus, what is important about gender balance – at least in the beginning – is not so much that women, drawing on their different life experiences from men, tend to prioritise and campaign on certain issues such as social affairs or gender equality. The importance lies rather more in the fact that gender balance is an indicator of an advancement in terms of gender equality in society, that will in turn affect the way women and men legislate. Once certain levels of sex balance are reached in the representative assemblies (around 40%), there is a convergence in the levels of priority male and female MPs give to different issues.

While previously more attention has been paid to the utilitarian arguments as reasons for increasing the presence of women in elected and nominated office, we would suggest that greater concentration on rights based arguments might now be in order. This is because the debate on the future of the EU clearly points towards a more constitutionalised framework for decision-making and, within this context, it is important to stress that women quite simply have a right to participate fully rather than that they could bring in new issues and decision-making styles. In this regard it is important to note too some of the dangers that may ensue from insisting on a utilitarian justification for more women representatives. One is that the newcomers may themselves be used instrumentally for political ends. This is because it is very likely that the new representatives will temporarily profit from a popularity raise. Parties and existing institutions will employ them and their popularity to increase their own prestige and use them as a way of finding a new source of increasing legitimacy.

We need to be careful, therefore, that gender balance is not used purely for politically strategic aims and that a real commitment to promoting women's role in public life lies behind the push for increased gender equality. Furthermore, we need to be wary of a backlash against the new representatives if the expected renewal of political culture does not materialise, or does not occur in the ways anticipated or indeed quickly enough. A further reason to insist on the *right* of women to participate rather than pure utility is that to do the latter may reduce the autonomy of the female representatives. If their political legitimacy comes from complying with certain expectations in terms, for example, of the issues on which they campaign or for which they have responsibility, this will severely limit the scope of their political action and would create a strong determination of what being a female representative entails.

Put simply, new actors such as women have a basic right to take part in the political decision-making processes which affect them and this goes as much for the EU as for domestic politics. The question for the future development of gender relations in the EU is not so much, therefore, one of why more women should be involved in the political process but rather one of how to bring an end to those structural factors which work in contradiction with their effective political involvement. The absence of women's participation in the future development of the EU reveals a clear disparity between principle and practice. For the principle of participatory democracy to be meaningful a change has to be brought about which will generate better female participation. The evident disparity in the composition of the Convention shows that gender equality cannot be taken for granted. It does not just happen but requires effort and positive measures to bring it about. Without this effort the process of natural selection takes over reproducing networks of national elites. This does not require simply a constitutionalisation of quotas or principle of parity (which in some member states, such as France, has not been tremendously effective in reducing gender imbalances in public office, especially at the higher levels) but rather a wide-spread, transparent and hard-hitting gender mainstreaming strategy running through the work of all European institutions in their decision-making and policy-making processes. It means too that the constitutional Convention must take gender equality seriously and evidence its commitment to this end in the legal texts it produces. It is, therefore, to the constitutional debate on the legal dimension of gender equality that we now turn.

2. THE LEGAL DIMENSION OF GENDER EQUALITY

The constitutional text which will be produced by the Convention represents the hard legal edge of the political and constitutional dialogue discussed above. This legal text must ensure that the fundamental rights of women are respected, that their claim to full citizenship is realised and that measures to ensure *de facto* equality between men and women are operationalised. With these objectives in mind, this section of the paper moves from the question of process to that of substance, examining the gender dimension of the legal debate over constitutional reform and revision of the Treaties, particularly the place of sex equality rights in the development of EU constitutional law.

Inevitably the EU's constitutional dialogue demands consideration of key concepts such as equality, discrimination, citizenship, fundamental rights, the rule of law and basic democratic values. Constitutionalism, however, has not escaped feminist critique, particularly from political scientists, who have questioned the alleged gender neutrality of these key notions, arguing that, while superficially neutral and abstract, they are inherently gender-loaded and may operate to exclude women's interests and concerns (Brown, 1995). This paper addresses two aspects of the problem: first, the utility of a general appeal to equality rights within constitutional debate; secondly, the more specific question of the gender equality provisions of the EU's Charter of Fundamental Rights.

The first and more general issue is, therefore, the place of rights, notably equality rights, within the current constitutional debate. It is striking and lamentable that neither the draft skeleton Constitutional Treaty, presented by the Praesidium on 28 October 2002 nor the more fleshy version of the draft Articles 1-16 of 6 February 2003 include equality amongst the core values of the Union articulated in Article 2. That said, it might be argued that equality can be obliquely read into a number of the values which are mentioned, notably respect for human dignity and respect for fundamental rights. Furthermore, equality claims are presented in the various guises of the objectives of the Union (Article 3-2 of the draft), citizenship (Article 7-1) and particularly fundamental rights which are brought very much to the fore in Article 5 of the draft of 6 February 2003 which contains a commitment that the EU's Charter of Fundamental Rights should be an integral part of the Constitution. From this latter inclusion it is evident that attention must be paid by those committed to improving gender equality in Europe to the articulation of their demands in the language of rights given the importance of the Charter in the construction of a human rights policy for the EU and as an indication of the *scope* of fundamental rights protection at the European level.

The second issue which requires addressing is, therefore, the more specific question of the content of the Charter with regard to gender equality. Does it, as it is designed to do, render more visible the *acquis communautaire*; does it promise more or less in terms of the elimination of existing gender inequalities in the EU? Unlike the draft Constitution, the preamble to the Charter expressly identifies equality as one of four common values of the Union (with human dignity, freedom and solidarity). This reference looks set to remain in place given the consensus which has emerged that the Charter should not be reopened for discussion at this stage. It might, nevertheless, be argued that had the body which drafted the Charter contained a better gender balance also (its composition of men and women in percentage terms differed little from that of the present constitutional Convention (Shaw, 2002b: 224)) then the commitment to gender equality in the Charter might have been stronger and its instruments sharper.⁹

On the positive side, however, some advances in the Charter should be noted which seek to build upon the existing *acquis*. For example, the mention in Article 1 of the principle of respect for human dignity is important for its capacity to ensure respect for female bodily integrity and address the issue of physical and mental abuse of women. Also welcome is the inclusion in Article 5-3 of the prohibition on trafficking in human beings which can be seen as an important step in tackling the growing problem of the exploitation of women for prostitution purposes. Important too is the broad commitment to social solidarity expressed in the Charter with the array of social provisions which harbour a gender dimension and largely render explicit the existing *acquis* (such as Article 31-1 on the right of every worker to working conditions which respect his or her health, safety and dignity; Article 33-2 on the reconciliation of family and profession life; Article 34 on social security and social assistance; and Article 35 on the right of access to preventive health care). That said, concern has to be expressed about just how effective these commitments are given that EU competence is relatively minimal in these areas, notably in matters such as housing, education and healthcare, and that many of these principles are subject to restrictions imposed by national laws.

It is somewhat ironic, though, that it is the third Chapter of the Charter, expressly devoted to 'Equality' which is the most pressing cause for concern. The blunt nature of the sex equality guarantees within the Charter deserves highlighting for their lack of direct applicability, their orientation as

⁹ It is to be noted, however, that like the present Constitutional Convention process, the process by which the Charter was drafted was relatively innovative in being deliberative and open natured when compared with the traditional IGC bargaining process (De Búrca, 2001).

programming measures rather than rights conferring measures and their failure to match the existing set of sex equality rights already to be found in EC law.¹⁰

The first provision deserving close attention is Article 21-1 which contains the principle of non-discrimination and prohibits discrimination on 16 grounds of which one is sex. Women are not a minority like the other groups referred to in Article 21-1 and it would be preferable to give sex discrimination the same recognition as nationality discrimination by having a separate clause devoted to it (mirroring Article 21-2 on the prohibition of discrimination on the grounds of nationality). It is noted with regret that this privileging of the prohibition on nationality based discrimination is replicated in the draft Article 6 of the Constitutional Treaty and that there is no corresponding prohibition against sex discrimination.

Alternatively attention might be focused on Article 23 of the Charter which is its main sex equality provision, stating in its first paragraph that 'Equality between men and women must be ensured in all areas, including employment, work and pay.' A degree of skepticism needs to be expressed, however, over the relative weakness of this paragraph alongside Article 141 of the EC Treaty (which guarantees equal pay for equal work or work of equal value). In this respect Article 23 of the Charter does not match the *acquis* of Article 141 EC. It does not create a right for individuals to invoke and it is presented as a more general statement of intent rather like Articles 2 and 3(2) of the EC Treaty which concern the promotion of the tasks and activities of the EC and include the promotion of equality between men and women as a general aim. In addition the provision in Article 23-2 of the Charter which provides for the possibility of positive action (a welcome inclusion *per se*) offers only a watered-down version of its Article 141-4 EC counterpart. Thus, the former, in stating that 'The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favor of the under-represented sex' admits only a *derogation* from the equality principle and does

¹⁰ The distinction between the gender equality provisions of the Charter and Article 13 (EC) which introduces a new legal basis for the adoption of measures to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation deserves highlighting. So far sex discrimination has been excluded from the two Council Directives adopted under Article 13 (Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ 2000 L 303/16 and Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ 2000 L 180/22, and excluded also from Council Decision 2000/750 establishing a Community action programme to combat discrimination (2001-2006), OJ 2000 L 303/23) (see further Shaw, 2002b). Nevertheless, the constitutionalisation of the gender equality objective in the draft Treaty appears to tip the balance in favour of gender rights as compared with Article 13 rights at the constitutional level. (We are grateful to Jo Shaw for drawing this point to our attention.)

not match Article 141-4's acknowledgment that positive measures are *means* to promote substantive gender equality and not merely derogations. Furthermore, it deserves noting that the Charter's Article 23-2 limits positive action to situations where one sex is under-represented whereas the EC Treaty allows such action also in order to prevent or compensate for disadvantage in professional careers, thus recognising that positive action can be a preventive or compensatory mechanism even where no under-representation of one sex is evident. The issue of duplication of sex equality guarantees in the Charter and existing EC law needs to be highlighted as problematic to the extent that where the content of the Charter does not match the *acquis* the very advantage of visibility of the Charter rights becomes a disadvantage. The concern is that the more favorable expression of women's rights in EC law (in the existing EC Treaty or in case law) is rendered invisible and that this may lead to a regression in human rights protection (Koukoulis-Spiliotopoulos, 2002: 68).

Given these inconsistencies and the relatively benign nature of the Charter's equality provisions (not to mention the limitations it contains in its horizontal clauses with regard to the actors to whom it applies and the spheres of EC and EU competence to which it is limited) it is suggested that a better way to promote sex equality at the EU level would be to include within Part I of the new Constitutional Treaty itself a free-standing sex equality provision. This should be justiciable, directly applicable, relevant to all areas not only equal pay and employment, and not simply limited to the actions of EC institutions and member states when implementing EC law. It should also be in addition to the inclusion of gender equality in Article 2 of the draft Treaty as a core value of the Union and to the promotion of positive action measures as an EU objective in Article 3. Amendments to these effects might be supplemented by a fuller chapter on the 'Equality of Women and Men' in Part II,¹¹ to be included, for example, in section A3 'Policies in Other Specific Areas'. Such steps may indeed mean that a politically hard choice over the degree of the EU's commitment to gender equality has to be made, but it is our view that this commitment should be evidenced and that the constitutionalisation process offers the most timely opportunity to date for this to happen. A constitutional consolidation and strengthening at the highest level of gender equality rights within the EU is a necessary step towards securing gender justice in Europe.

¹¹ This would become Part III of the Constitutional Treaty should the Convention decide that the Charter of Fundamental Rights be placed in Part II instead of in a Protocol annexed to the Constitution.

3. THE SOCIAL DIMENSION OF GENDER EQUALITY

It has been noted above that the preamble to the EU's Charter of Fundamental Rights contains an expression of the EU's commitment to the value of solidarity. The draft Constitutional Treaty does not specifically identify solidarity as one of the values of the Union articulated in Article 2 of the draft Articles 1-16 but includes it, alongside justice and tolerance as a 'practice' contributing towards the aim of a 'society at peace'. Of course the constitutionalisation of social solidarity, as noted by Weiler (2002), represents a 'hard choice' the effect of which is to take the concept out of day-to-day politics but, if not realised, would represent a lost opportunity to crystallise the specifically European tradition of the welfare state. These references are of prime importance in the promotion of the work of the Union towards the consolidation of a 'Social Europe'. Since the beginning, sex equality has been one of the distinctive traits in the formulation of a European social policy. The question now is whether the opportunity is taken to consolidate this principle through its constitutionalisation, and whether the commitment towards the gender dimension of social and economic policy is translated via implementation of the necessary policy instruments. It is suggested, therefore, that the draft Treaty and the Charter's underlining of solidarity and social rights is a key component of the EU's profile and should be fully exploited in order to develop and build upon the construction of an active European social citizenship.

The concept of social citizenship that is emerging from the constitutional debate on the future of the EU, together with the discussion of social rights, is already finding expression in the definition of the European Social Model (ESM) which sets out a number of goals, methods and instruments aimed at promoting full employment while securing social cohesion. The definition of the ESM inevitably connects with the wider gender dimension of the constitutional questions facing the EU discussed above, but most particularly it is linked to the promotion of an equalities agenda and the concern to address the EU's democratic deficit by rendering more audible different voices within the EU policy-making process. Thus, the final section of this paper is given over to an analysis of the gender dimension of the ESM, assessing the impact of the employment and social guidelines with respect to equal opportunities and the interaction of this dimension with the constitutional debate on the future of the Union.

By way of background, as it was set up by the Lisbon Council in March 2000, the ESM attempts to match employment growth with greater social cohesion to become 'the most competitive and dynamic knowledge-based economy'. The idea of the ESM is undoubtedly connected with the fact that while economic integration has taken place through the common market and the

EMU, 'social integration' is still a rather unclear concept. Hence, the aim is to harmonise social and employment policy in the light of an already harmonised market. The two key documents which underlie the current constitutional debate, that is the Laeken Declaration and the Charter of Fundamental Rights, contain definitions of political, civil, and social citizenship which in turn refer to certain 'universal' values and principles and can be seen as drawing inspiration from the ESM in the formulation of a European social citizenship. What requires examination from a gender perspective is, therefore, the coherence and potential of the concepts embedded in both social policy instruments and the emerging constitutional texts which lead to the reformulation of key values such as solidarity, equality, freedom and discrimination. To this end, the present section considers two main aspects of the ESM. First, we examine the *contents* of the EES and their gender impact. Secondly, we turn to the question of *procedures*, that is the instruments - constitutional or otherwise - put in place for the implementation of EU employment and social policies.

3.1. The European Social Model and Social Citizenship

The ESM deals with values of social citizenship embedded in welfare states or those aspects of citizenship that are related to social policy entitlements. The obvious relevance of the ESM for the debate on the future of the Union is that if some of the social rights expressed in the ESM are included in the Charter, and these in turn are included in the Constitutional Treaty, then the EU can be seen to confer rights on member state nationals that might well go beyond the rights available under domestic law (Bercusson, 2002). Under the ESM, therefore, certain social rights - even if, as yet, these operate at the level of political declaration without being legally binding - can be included together with the more traditional civil and political rights in a conception of European citizenship.

A particular problem, however, is that, despite all appearances of neutrality, citizenship is, and has always been, a highly contested concept from a gender perspective (Kingdom, 1999). Traditional welfare states and their social policies, together with the notion of social citizenship derived from these provisions, have always evolved around the relationship between paid work and welfare. Feminist research has shown, however, that such a relationship has been mediated by another far more 'subterranean' relationship, one that links men's waged labour to women's unpaid domestic work. Traditionally, the organisation of these 'social models' around the 'male breadwinner' model implied that those outside the labour market were not included in social protection and social rights on an independent basis (since they are not wage earners) but on the basis of family dependency. Crucially, the role of women as

carers in the private domain was a key part of the construction of this model and, at the same time, operated as an obstacle to their integration in the labour force.

It should be recognised, however, that times change and the context of the ESM is radically different from the model outlined above precisely because the 'male breadwinner model' has been substantially eroded on many fronts (Lewis, 2001). Simultaneous factors have worked towards the consolidation of a different settlement and this has important gender implications which in turn impact upon the enjoyment of the rights which an active social citizenship entails. Through the European Employment Strategy, the revised 'European Social Model' relies to a very large extent on increasing female employment rates. In economic terms, the 'revised contract' and the full employment goal is a prerequisite for competition and economic growth. Furthermore, there is paradoxically a potential tension between women's lack of participation in the formal economy and the development of the welfare state (Crouch, 1999). This is because tasks that have previously belonged to the realm of unpaid domestic work are transformed into sources of paid work in the market and, in social terms, access to the labour market (which represents a claim for women's economic independence) leaves the logic of welfare and dependency untenable.

Hence, it is to be welcomed that the specific framework of the ESM brings more awareness to the relationship between paid and unpaid work and to the burden of care on women's professional lives. This recognition needs to be developed now at a higher, constitutional level, notably in pushing the visibility of the Charter's social provisions and commitment to solidarity. The inclusion of these rights into a future Constitutional Treaty would certainly not imply a straightforward reduction of inequalities. However, as argued earlier, it would be relevant in shaping the European polity's project under construction today and as a legal reference to other 'soft' policy tools. Thus far, the strategy to increase the participation of women in the labour market has included policy initiatives (such as the Parental Leave Directive¹²) and a commitment to reconciling work and family life (Article 33-2 of the Charter). Simultaneously the European Commission has also been aware of gender segregation patterns in the labour market and the European Employment Strategy's 4th Pillar on 'Equal Opportunities' specifically addresses the issues of gender gaps in employment and unemployment, reconciling work and family life (policies on career breaks, parental leave and part-time work), and reintegration into the labour market.

¹² Directive 96/34/EEC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC, OJ 1996 L 145/4.

A number of problematic issues, however, remain. Aside from the gender equality point, there are important economic and functional imperatives for supporting policies to reconcile better working and family life and to make it possible in practice for women to combine having children with the pursuit of a fulfilling working life beyond the domestic sphere, thereby maximising the growth potential of the European economy. The problem of low fertility levels, below replacement rates in all European countries, is at present gaining visibility as a question in need of both a political and policy response. Although sometimes misinterpreted in the public debate,¹³ it is self-evident that those countries with the lowest birth rates in Europe, most prominently Spain and Italy, are characterised by their lack of public support for social care and their poor performance in female employment indicators (such as unemployment, precarious employment, etc.). To rethink the ways in which family and working life can be better reconciled – in terms of both the working conditions of women and the quality of care provided – is, therefore, important not only for promoting the equality objective in the EU's agenda, but also for improving its performance in the employment sector.

A second problem is the implementation of employment equality measures, something which will continue to need addressing in the context of the emerging constitutionalisation of social rights and social citizenship. After all, the concept of sex discrimination, prohibited in the workplace as a result of the equal treatment principle is, in practice very limited (Beveridge, Nott & Stephen 2000). For that reason, the EU equal opportunities agenda has been progressing through the development of other instruments to implement the equality principle. The next section will outline these instruments with a view to measuring their effectiveness in the context of the present constitutional dialogue.

3.2 From Equality Law to Constitutionalising Gender Mainstreaming

Currently, the two most important principles to emerge from EC sex equality laws are that of equal pay for equal work and non-discrimination on the grounds of sex. These are supplemented with a number of other measures, notably directives which affect women's relationship with the labour market (such as the directives on pregnant workers, part-timers and parental leave).¹⁴ However, the

¹³ The declining number of newborns in Europe is often too easily linked to problems of a different nature such as the financial sustainability of the public pensions system or immigration policy.

¹⁴ Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding, OJ 1992 L 348/1; Directive 97/81/EEC of 15

capacity to secure equal treatment for women and men through legislation is limited when it comes to identifying gender inequality patterns in the market place. As Rees (1998) has argued, the equal treatment approach is necessary but not sufficient since it fails to address the fundamental causes of sex inequality. With this in mind 'positive action' was introduced precisely to overcome the gap between formal equality and equality of results and the European Commission Action Programmes have put into action this new policy tool. Positive action practice has, however, shown that it is still insufficient to the extent that it only operates in specific fields (women friendly policies) and it is unable to tackle the problem at the planning stage before inequality is reproduced. So, while positive action is recognised in some fields of social and employment policies, it does not apply to other areas such as economic or foreign policy where practices are often gendered.

As a complement to positive action measures, and pushed by the entry of the Nordic countries into the EU in 1995 (especially Sweden with its strong commitment towards gender equality (Liebert, 2002)), the Commission in 1996 adopted 'gender mainstreaming' as the third generation gender equality tool. It is this tool which we would suggest needs to be further strengthened within the emerging constitutional framework. Mainstreaming, which goes a step beyond previous equality mechanisms by attempting to integrate a gender perspective into the process of formulating and implementing policies, has a number of advantages over its predecessors.¹⁵ First, it moves beyond formal equality to tackle substantive equality. Secondly, it applies to all policy domains and thirdly, it is anticipatory in that it looks for the causes of gender equality at the planning stage and not at the consequences after policy implementation. It is our view, however, that mainstreaming should work as a complement rather than as a substitute to the other two main gender equality instruments (that is equal treatment and positive action).

The main problem with gender mainstreaming at present, however, is that it depends to a very large extent on political commitment to the principle and this leaves something to be desired. It is to be welcomed that the principle of gender mainstreaming has been included in the draft text of the Constitutional Treaty among the list of objectives of the Union, emphasising the EU's commitment to this objective at the highest, constitutional level and enabling it to operate as a guiding principle throughout all EU activity and policy-making.

December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC - Annex : Framework agreement on part-time, OJ 1998 L 14/9; Directive 96/34/EEC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC, OJ 1996 L 145/4.

¹⁵ For an assessment of the opportunities and risks presented by gender mainstreaming see Mazey (2002).

It is hoped that this should produce a greater incentive to tackle the difficulties which currently hinder the effective operation of gender mainstreaming processes. At present, as Pollack & Hafner-Burton (2000), following Lewis & Ostner (1995) have argued, there are three main institutional 'needles' eyes' through which gender mainstreaming must pass: (1) the European Commission's DGs which have little or no experience of gender politics; (2) the intergovernmental level of the Council and (3) the member state level where EU provisions are operationalised through very different institutional logics and social and political orders. This triple level of institutional hurdles demonstrates that the practical application of gender mainstreaming is complex. It shows too that in addition to a constitutional commitment to mainstreaming there must also be in place a supportive political and organisational context (including new mechanisms, resources and operational infrastructure) to accompany mainstreaming initiatives. It is notable and regrettable that the very texts currently being produced by the institutions of the Union with regard to the constitutional revision process are not even gender neutral in the language they use. This is the case, for example, with regard to the working document entitled 'Penelope' produced by a Commission group of experts and presented to the Convention by Romano Prodi on 5 December 2002 which sets out the possible content of the future EU Constitution and appears to envisage that the Presidency of the Commission will continue to be held only by a man.¹⁶

Just as important as the gender content of EU social policy and the political context in which mainstreaming is introduced is the procedural aspect of the process. In this respect the debate over the appropriate mechanisms for implementing gender equality have often turned upon the distinction drawn between 'hard' and 'soft' legal measures. In the final section of this paper we argue that both options are necessary tools for strengthening gender equality provisions and for effectively implementing a mainstreaming strategy.

First, by way of explanation, hard law measures represent the legally binding framework of labour regulation (i.e. Treaty provisions, EC regulations and directives, together with the case law of the European Court of Justice). These determine a number of guarantees that can play a major role in shaping the legal principles of equality and non-discrimination. The ECJ has already played a pioneering role in the application of the equality principle in EC law

¹⁶ See, for example, Article 50-3 of the proposed Constitution which, in the context of the organisation of the Commission, reads 'The President shall allocate to each Vice-President responsibilities assigned to Members of the College. He shall endeavour to make them coincide with the distribution of responsibilities between the Parliamentary Committees and between the Council configurations.' See also the French text of the Convention's draft Articles 1-16 (CONV 528/03) which in Article 2 refers to the '*respect des droits de l'Homme*' rather than '*droits fondamentaux*'.

and, more recently, has combined the equal treatment principle and positive action to take into account the wider socio-economic background in which inequality takes place (Shaw, 2002: 223). A reinforced commitment to gender equality in the future Constitutional Treaty and in the Charter of Rights would increase the hard law component of gender equality provisions.

Nevertheless, even if hard law measures exist as an available tool for advancing women's position in the EU, the question remains as to how the rights and duties which they contain are to be enforced. It is in this respect that, in the realm of social and employment policies, 'soft' measures are increasingly gaining importance. Notably, a defining feature of the ESM is that labour regulation should be discussed and implemented through social dialogue and agreements. The Open Method of Coordination is about reinforcing the role of social partners through collective labour rights and this shows a number of advantages. From a gender perspective, the most important ones are that it can promote positive behaviour patterns, being used as a code of good practice and allowing for a wide range of representation among social actors. There is a danger, however. The process of negotiation of soft law measures is vulnerable to the same issue of an under-representation of women amongst the negotiating parties (or social actors) as discussed in part 1 above in relation to the Constitutional Convention itself. For OMC to work, the same issues of balance of gender representation need to be addressed. If under OMC the social partners are to play a much greater role in policy-making then efforts towards the democratisation (in terms of an equal balance of men and women in the decision-taking bodies) are required in order to guarantee fair play in the discussion of collective agreements and social pacts. In this aspect, cross-national variation within the EU is of key relevance. Countries with a long tradition of implementing gender mainstreaming and a strong political commitment to equal opportunities, will stand a far better chance of including a gender dimension in the negotiations and collective agreements. By contrast, other countries where collective agreements still function along corporatist, very 'male' dominated lines, would need explicit commitments and additional methods to incorporate gender mainstreaming into their working practices. Given that the possibility to act politically challenges existing definitions of policy, the implementation of gender mainstreaming needs to go along with access to women's policy machinery (including governmental and non-governmental institutions). The capacity of women's advocacy groups to influence policy-making greatly determines the chances that gender equality and discrimination issues have to obtain specific consideration (Gardiner, 1997).

Finally, though by no means unimportant if gender mainstreaming is to become a new policy tool that will cross all policy sectors, it is rather disappointing that the recent debate on governance in the EU (leading to the Commission's White Paper on Governance published in July 2001¹⁷) contains no explicit reference to gender mainstreaming when referring to the 'Community Method'.

4. CONCLUDING POLICY RECOMMENDATIONS

The issue of gender balance therefore, cuts right through the EU's effective implementation of its vociferous commitment to democracy, legitimacy and citizenship, both social and political. This suggests that its policies for promoting gender equality need to operate on all fronts. These should include:

- An enhanced commitment at the highest constitutional level to gender equality through:
 - the inclusion of equality of men and women as a core value of the Union (inserted in Part I, Article 2 of the draft Constitutional Treaty)
 - a new and additional specific provision for ensuring non discrimination on the grounds of sex (inserted in Part I)
 - the promotion of positive action measures as an EU objective (inserted in Article 3, Part I)
 - a full chapter on 'Equality of Women and Men' (inserted in Part II).
- The maintenance in full of the *acquis communautaire* in the draft Constitutional Treaty and the further development of this rather than its marginalisation and disappearance.
- The use of gender neutral language in all Convention and EU documentation and in all linguistic versions of these.
- The implementation of social and employment policies which make the reconciliation of work and family a practical possibility thus promoting the gender equality principle in the labour market and the maximisation of the Union's overall employment performance.
- The implementation of the Union's commitment to gender equality through both hard and soft legal measures which have been introduced after a rigorous gender mainstreaming process.

¹⁷ European Governance. A White Paper, COM (2001) 428 of 25 July 2001, OJ 2001, C 287/5; europa.eu.int/comm/governance/index_en.htm.

- A clear mandate to guarantee as of right a higher degree of participation and representation of women in decision-making and policy-making bodies at EU level.

In this way the Union's commitment to democracy would be substantiated and its quest for legitimacy closer to realisation.

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APPENDIX 1

The Composition of the European Parliament by Country and Sex¹⁸

Country	Date of elections	Seats	Women	Percentage
Sweden	06.1999	22	10	45,5%
Finland	06.1999	16	7	43,8%
France	06.1999	87	37	42,5%
Germany	06.1999	99	38	38,4%
Austria	06.1999	21	8	38,1%
Denmark	06.1999	16	6	37,5%
Netherlands	06.1999	31	11	35,5%
Ireland	06.1999	15	5	33,3%
Luxembourg	06.1999	6	2	33,3%
Spain	06.1999	64	21	32,8%
Belgium	06.1999	25	8	32,0%
United Kingdom	06.1999	87	21	24,1%
Greece	06.1999	25	5	20,0%
Portugal	06.1999	25	5	20,0%
Italy	06.1999	87	10	11,5%
Total:		626	194	31,0%

¹⁸ Figures as of 20 February 2003, available at <http://www.ipu.org/wmn-e/regions.htm>. Classification is by descending order of the percentage of women.

APPENDIX 2

Women in National Parliaments in the EU Member States and Accession Countries¹⁹

World's Rank	Country	Lower or single House				Upper House or Senate			
		Election s	Seats *	Wo men	% W	Election s	Seats *	Wo men	% W
Member States	1 Sverige	09 2002	349	157	45,0	---	---	---	---
	2 Danmark	11 2001	179	68	38,0	---	---	---	---
	3 Suomi/Finland	03 1999	200	73	36,5	---	---	---	---
	7 Nederland	05 2002	150	51	34,0	05 1999	75	20	26,7
	8 Österreich	11 2002	183	62	33,8	N.A.	62	13	21,0
	9 Deutschland	09 2002	603	194	32,2	N.A.	69	17	24,6
	15 España	03 2000	350	99	28,3	03 2000	259	63	24,3
	26 België/Belgique	06 1999	150	35	23,3	06 1999	71	20	28,2
	43 Portugal	03 2002	230	44	19,1	---	---	---	---
	49 United Kingdom	06 2001	659	118	17,9	N.A.	713	117	16,4
	55 Luxembourg	06 1999	60	10	16,7	---	---	---	---
	61 Ireland	05 2002	166	22	13,3	07 2002	60	10	16,7
	66 France	06 2002	577	70	12,1	09 2001	321	35	10,9
	81 Italia	05 2001	630	62	9,8	05 2001	321	25	7,8
	90 Ellas	04 2000	300	26	8,7	---	---	---	---
Accession countries	19 България (Bulgaria)	06 2001	240	63	26,2	---	---	---	---
	38 Polska (Poland)	09 2001	460	93	20,2	09 2001	100	23	23,0
	48 Latvija (Latvia)	10 2002	100	18	18,0	---	---	---	---
	50 Eesti (Estonia)	03 1999	101	18	17,8	---	---	---	---
	" Slovensko (Slovakia)	09 2002	150	26	17,3	---	---	---	---
	54 Česká Republika (Czech Republic)	06 2002	200	34	17,0	10 2002	81	?	?
	65 Slovenija (Slovenia)	10 2000	90	11	12,2	---	---	---	---

Continued on next page

¹⁹ Data compiled by the Inter-Parliamentary Union on the basis of information provided by National Parliaments before 23 December 2002 (<http://www.ipu.org/wmn-e/classif.htm>). This information has been completed with data for Turkey and Austria found in the Parline database (<http://www.ipu.org/parline-e/parlinesearch.asp>). Figures correspond to the number of seats currently filled in Parliament. Countries are classified by descending order of the percentage of women in the lower or single House.

Continued from previous page									
73	Κύπρος (Cyprus)	05 2001	56	6	10,7	---	---	---	---
"	România (Romania)	11 2000	345	37	10,7	11 2000	140	8	5,7
74	Lietuva (Lithuania)	10 2000	141	15	10,6	---	---	---	---
85	Malta	09 1998	65	6	9,2	---	---	---	---
86	Magyarország (Hungary)	04 2002	386	35	9,1	---	---	---	---
112	Türkiye (Turkey)	11 2002	550	20	3,6	---	---	---	---



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