

EUROPEAN UNIVERSITY INSTITUTE, FLORENCE

EUROPEAN POLICY UNIT

EU / WORKING PAPER No. 87/261

NEW STRATEGIES IN THE EEC
FOR EQUAL OPPORTUNITIES IN EMPLOYMENT
FOR MEN AND WOMEN

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Printed in Italy in March 1987
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Italy

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Further information about the work of the European Policy Unit can be obtained from the Director, at the European University Institute in Florence.

Mrs Odile Quintin, Head of the EEC Bureau for questions concerning employment and equal treatment of women, presents in this paper the new strategies of the community institutions in this field. The paper describes how, in spite of a very limited legal basis, the Community has been able to expand in an area which has become one of the most advanced parts of the Community social policy.

New Strategies in the EEC for Equal Opportunities
in Employment for Men and Women

by
Odile Quintin

I should like to set out as clearly as possible the Community policy on equal opportunities for women. I must start by noting that some people are sometimes rather surprised that there is a Community policy for women, because the Treaty of Rome itself makes no clear mention of women in the sense that the Treaty applies to both men and women without distinction. The only article of the Treaty of Rome which directly concerns equality is the famous Article 119, which provides for equal pay for men and women. Interestingly enough, this was not drafted for social purposes, but because of the economic situation of one Member State of the Community, France, which thought that it was better than others in the field of equal pay and feared possible effects on competition. It is interesting to see how an article drafted in such circumstances has given rise to a wide-ranging policy which I am sure the founders of the Treaty would never have imagined.

The first activities of the Community in the area of equal opportunities for women were concentrated on legal issues, that is on Directives. Three Directives have been passed. In 1975,

the Directive on equal pay was adopted to clarify Article 119. It is worth noting that this was the first Directive in the area of social policy. In 1976 came a much more far-reaching provision, the Directive on equal treatment in access to employment, working conditions and vocational training and promotion, which lays down the basis for a policy of desegregation of the labour market. The third Directive was passed in 1978 and concerns equal treatment in so-called statutory social security schemes, i.e. schemes which are usually laid down by social security legislation, in contrast with so-called occupational social security schemes.

These three Directives provide for a basis for non-discrimination for women at work. The first two have been in force for a number of years, the third only entered into force in 1985. This six-year transition period was due to the fact that social security - a rather complicated field in itself - was also quite severely affected by the economic situation, which made things still more complex and gave rise to a variety of legal problems for its implementation.

These Directives have been implemented by national legislation in all the Member States. From a legal viewpoint I would say that in general they have been more or less correctly applied, though there are still some gaps and even though in some

cases the Commission had to bring Member States to the Court of Justice. Cases have been brought against three Member States on equal pay and against all Member States as regards equal treatment, but what was at stake were differences in the interpretation of the Directives rather than serious disagreements on substantive issues. I will come back to this point later.

The Commission very quickly recognized that legal action in itself was necessary, but not sufficient. Legislation has not much sense - even if you have the best legislation in the world - when de facto inequalities remain. As a result, the Commission tried to expand its policy from the "equal treatment" concept to the "equal opportunities" concept, i.e. from equality in law to equality in practice. That transformation was at the centre of the new Community action programme, proposed to the Council of Ministers by the Commission at the end of 1981. This was a three-year programme, scheduled to end in 1985, in liaison with the end of the U.N. Decade for Women, which was ended by the Nairobi conference in July 1985. Both action programmes have two fundamental bases: firstly to reinforce and expand equality in law, and secondly to start to promote equal opportunities in practice, in particular to develop what is called positive action. This latter aspect is of course more innovative; it has given rise to more expectations from interested parties. I will

try to describe these two limbs of the Community action programme.

On the legal side, the Commission has tried to reinforce the correct implementation of the existing Community legislation, and this in two ways. First, the Commission as Guardian of the Treaty brings any Member State which does not correctly apply Community legislation before the Court of Justice. However, Commission officials obviously cannot know everything. All they have is the national legislations and information provided by the Member States, which is a rather narrow way of getting correct information. The Commission therefore thought that it would be better to have a group of independent experts which would provide it with information on what happens not only in the field of legislation, but also in collective agreements and in practice. Otherwise it would be very difficult to review every collective agreement in every Member State to see whether or not there is not any discriminatory provision, or to have a clear image of what the practice actually is.

This expert group is composed of both lawyers, members of trade-unions and employers' associations and independent experts. The members of the group have been asked to concentrate their work in particular on the rather difficult concept of indirect discrimination. Although indirect discrimination is prohibited

in all three Directives, it was assumed that it was going to develop much more than direct discrimination. I would say that in most Member States there is now very little direct discrimination in the sense of formal limitations on access to jobs for women, but indirect discrimination is growing, in particular in economic circumstances. As a matter of fact, it is very difficult to define what indirect discrimination is. The Commission has tried to define it in answer to a parliamentary written question by saying that it is something which is neutrally described, but which has in fact an adverse effect on one category of people, based on sex.

If for instance you say that everybody can be a policeman but that applicants have to be one metre sixty-seven minimum, you will not have many women. That is typical indirect discrimination. But there are indirect discriminations which are much more hidden than that, like all the discriminations which are linked to what we call the "head-of-household" concept. This appears clearly in Belgium. Belgium is one of the countries of the Community where the unemployment rate is the highest, it also has a social security system which is quite comprehensive, in particular as far as unemployment benefits are concerned. In order to reduce it, it was decided to give priority to heads of household for receiving unemployment benefits. Is it or is it not discriminatory? Theoretically, anybody, man or woman, can be

a head of household. However, if you look at the statistics, you will see that 95% of heads of households are men, which means that women are the ones who are excluded from unemployment benefits. Is it or is it not indirect discrimination? The Commission has had a lot of discussion about it. It also had some ideas derived from the Jenkins judgement of the European Court of Justice of 31 March 1981 on equal pay, which said that when a provision has a more negative effect on one category than another, it constitutes indirect discrimination unless there are justifiable reasons for it. This case concerned a difference in pay between part-time workers and full-time workers, but it is quite an interesting judgement because it requires us to examine what is or what is not justifiable. Of course this type of problem is bound to arise in a period of economic difficulties. The group of experts is therefore concentrating on indirect discrimination and has found a considerable amount, both on equal pay issues and on equal treatment issues, in employment as well as in social security.

The second thing that the Commission did in order to achieve a correct implementation of Community legislation was to improve legal redress. One major consequence of the Directives has been to provide legal redress for both men and women who think that they are discriminated against. It has been noted, however, that this remedy has not been used very much, especially

by women, for a number of reasons like lack of information and uncertain economic circumstances. It also appeared that legal structures in Member States did not always favour its development. The only Community country which has developed such legal redress is the United Kingdom. This certainly has to do with the fact that the United Kingdom is a country where legal redress is widely available (what would be called in French un Etat de droit). But it is also the only country where there is a body responsible for promoting legal redress, with a budget for this purpose. That body is the Equal Opportunities Commission, whose activity in this area is quite significant. The Commission has made a comparative analysis of the situation in the Member States to seek adequate ways to promote better use of this legal redress - and thereby to achieve a better implementation of the Directives.

The Commission also tried to expand Community legislation where it felt it was necessary. First, it has proposed three new Directives in the area of equal opportunities stricto sensu. The first is intended to apply equal treatment to men and women in self-employed occupations including agriculture, for it was clear that, although the Directives apply to these people in principle, most women working in these areas have no professional status, no salary, no social security rights. Very often they do not even have protection of pregnancy and motherhood nor equality in

professional representation. The new Directive therefore tried to give these women some rights linked to their professional activity in all these areas, for it was thought that it was not appropriate to give them a real professional status.

The second new draft Directive is on parental leave and leave for family reasons. Parental leave is given to both parents after the end of maternity leave, to take care of their child for a certain period of time. It is a provision which is increasingly available in Community countries. There are now only three countries of the Community which do not have parental leave: the United Kingdom, the Netherlands, and Ireland. The others have provisions in force or in preparation. This right was granted to both parents on an equal basis, because in some countries it is available for the mother only, which may have a negative impact on women's employment and which does not help to promote a better share of occupational and family responsibilities between the father and the mother. The second part of the Directive allows a minimum number of days of leave for family reasons (e.g. when a child is severely sick or when a member of the family dies, etc.). The major problem the Commission had to face was to decide whether or not this leave should be financed. The situation varies greatly in this respect in all Member States. The Commission finally decided that in the present economic circumstances it would be unwise to require

Member States to have paid leave, but it nevertheless recommended Member States to provide for paid leave in the long term. This would of course promote better equality because it is probable that not many fathers will take it if it is not financed.

The third draft Directive is on occupational social security schemes, and will expand the present Directive, which only applies to statutory schemes. It should be pointed out that this Directive on social security does not cover major issues such as retirement age and survivors' pensions, which will be part of a new Community instrument, because Member States wanted to have this out of the Directive for obvious economic and financial reasons.

These three Directives are currently before of the Council, which was showed no real enthusiasm about them, or in any event about any new Directives in the social area. In this period of crisis, not only in the Community in general, but in particular in the social area, the tendency is rather in favour of de-regulation. Some Member States are against any Community interference in their legislation and even against any further legislation in general, whatever its origin, in the social area. These Member States are mainly the United Kingdom and Denmark, which also happen to be the Member States in which the political problems generated by their participation in the Community are

the most acute. These States are also extremely reluctant to any kind of equality legislation, which makes Commission initiatives in this area a complicated political issue. The Commission might perhaps have a better chance for parental leave and social security if it were not for the opposition in principle from the United Kingdom and Denmark. Such a political problem can only be settled at the political level, and it is very difficult at the moment to predict how matters will evolve.

In addition, it is worth mentioning two other draft Directives which are not real equality Directives, but which will if they are adopted (which does not seem to be likely) have an impact on women's employment: the Part-Time Directive and the Temporary Work Directive. Both of them are blocked by the same Governments and for the time being have not much chance of being adopted in their present form.

The Commission has also taken initiatives in other areas, though not legal initiatives stricto sensu. The first area is taxation, and its effect on women's employment, in particular on married women's employment. It is quite obvious that some taxation systems, especially systems which are based on cumulation of incomes, are quite negative for women's employment. At this stage, the Commission has preferred for both political and legal reasons not to legislate in this area, because taxation

as such is not part of Community competence; the problem can only be tackled by virtue of the equal treatment dimension. The Commission produced a Memorandum which was essentially a political initiative, aiming at trying to initiate a debate at the political level between the Member States of the Community, to make corrections in the tax system with the aim of promoting a separate income tax system. Such a system already exists in some Member States of the Community, in particular Denmark and Italy.

Progress has been less significant in other areas. The first one is protective legislation, i.e. legislation concerning work done in difficult conditions. This type of legislation, usually inherited from the nineteenth century, tends to protect women more than men. The most famous example is the ban on night work for women in some Member States of the Community. When linked to the new forms of redistribution of working time, such legislation sometimes has a prohibitory effect on women's employment. I am thinking for instance of new technologies, where there is now a great deal of reorganization of working time, which implies partly night work. Most women are excluded from these new jobs, with obvious negative effects on the general level of female employment. The Commission will therefore recommend the removal of protective legislation, on the basis of the equal treatment Directive. This latter provision already contains such a requirement, not to the extent that all

protection should be suppressed but rather that in some cases protection should be extended to cover both men and women. This might be the case, for example, for night work.

The second area where the Commission is taking action is social security. I mentioned that major issues such as retirement age and survivors' pensions are not covered by the present Community legislation. The Commission is now drafting a new instrument which will cover these issues in the sense of greater individualization of rights, because it was noticed that most indirect discrimination is linked to the existence of what are called derived rights - derived usually from the man.

The last area is protection of pregnancy and motherhood, where the Commission has so far carried out a comparative analysis of the situation in the Member States with regard to both legal and financial protection. It is now examining whether further harmonization is necessary, having regard also to the parental leave Directive.

The general conclusion to be drawn from these initiatives is that the legal work of the Commission is very much linked to the overall situation of the Community on general political terms and in particular in the social area. The second aspect of the action programme which is rather more innovative in Community

policy consists in trying to promote equal opportunities in practice, in particular by positive action.

Positive action is better known as positive discrimination or affirmative action in the U.S. conception of the term. It is usually equated with rigid methods aimed at promoting more women in certain areas, for example by using quotas. The Commission has taken a much broader view of positive action, covering any action which has an effect on promoting equality in practice. This may range from, for example, information campaigns to raise consciousness, right along the spectrum to rigid actions such as quotas. The reason for this attitude is twofold: firstly, it appeared that the American model had not worked particularly well; secondly, European national legislation is not advanced enough to go very far. In particular, there are constitutional problems in some Member States with such measures as quotas. An Opinion was recently handed down in France by the supreme constitutional body which said that they were unconstitutional. The same reasoning also applies to Germany and to the United Kingdom. The Commission therefore opted for more flexible methods, and has tried to promote positive action in two ways.

Having noted that positive action had been much more extensive in countries where legislation or framework provisions existed, such as the United States, Sweden or Canada, than in

Community Member States, the Commission concluded that, even if it were not possible to go for a legal instrument in this area, it would be advisable to have a political commitment from Member States to promote an overall policy of positive action. In practical terms, this meant moving on from the present "pilot" situation of small positive-action initiatives, towards the promotion of a comprehensive policy as the only kind able to have a widespread effect. The instrument for this qualitative leap was the Recommendation on positive action adopted by the Council of Ministers in 1984. Though not legally binding, it embodies Member States' political commitment to promote its policies. The Recommendation provides that Member States commit themselves to adopt a comprehensive policy for positive action and to develop a framework to promote it. Secondly, it identifies the areas for the promotion of positive action, ranging from education and training to more rigid possibilities. Lastly, Member States agreed to provide a control follow-up of the policy guidelines embodied in the Resolution, as it is common knowledge that when commitments are made in the absence of a system of control and follow-up, then things just vanish and disappear. This Recommendation should provide the basis for future development of the Commission's positive action policy.

The Commission also tried to identify the areas where the Community could stimulate and promote positive action programmes

together with the Member States, starting with education. Education is very much challenged by some Member States of the Community as being outside Community jurisdiction, so that the possibility of action at Community level is much more difficult than in other areas. Nevertheless, the Council of Ministers is now discussing a new action programme on equal opportunities for girls in education. This would cover a wide range of actions, from the de-stereotyping of material to structural measures to encourage girls to diversify their vocational choices, plus an information campaign, with some support, including financial support, from the Commission, to promote these actions. The Commission has created a network of equal opportunity advisers in the area of education and training, and has asked this network, coordinated by Madame Sullerot from France, to promote significant actions in each country of the Community in this area and to create networks at national level to promote these actions. The results of these initiatives, which have now been in operation for over two years, are quite positive for the time being.

One of the many priorities of the European Social Fund is to promote diversification of vocational choices for women, both young women and adult women, and to help them re-integrate into the labour market following a career interruption over a certain period, in particular to take care of their children. This

possibility has not been widely used by Member States: in 1984, only one and a half percent of the Fund was used for these experiments. The President of the Commission recently declared that it should be expanded and that it should become a priority in the Social Fund's new guidelines.

As regards employment policy, the situation is characterized by the segregation of the labour market between men and women: women are to be found mainly in low-paid occupations and concentrated in certain jobs and sectors. The aim of the Commission -which also appears in the equal treatment Directive- is to reduce this segregation. In this area, beside legal provisions, something quite new in EEC policy has been attempted: promoting pilot actions directly in some sectors. A pilot experiment was launched in the banking sector with the help of several banks in the Community. Banking was chosen because it is a sector which for the time being is not suffering too much from the crisis and which still has money. Conversely, banking is very much affected by the introduction of new technologies, which is bound to have important implications on women's employment, since more than 40% of people working in this sector are women. This pilot action has been quite fruitful. Four banks in the Community agreed to play a leading role before this type of action was extended to others. It has been interesting to note

how the Commission was able to achieve results by collaborating directly with firms.

This achievement is all the more interesting given the current static discussions with the social partners at Community level, which are completely blocked by the employers' reluctance for social initiatives. Direct arrangements with private firms allow the Commission to start a positive action programme and to rely on a kind of ripple effect. This was especially clear in the Belgian case. The leading Belgian bank started a positive action programme, immediately followed by two other banks. On this basis, the Commission thought it interesting to expand this type of action to the whole industrial sector. There are now pilot experiments with a minimum of three companies in six Member States of the Community: United Kingdom, France, Italy, Germany, Netherlands, and Belgium. Large companies in the Community are quite interested and seem willing to take part in initiatives which may have a good effect on the promotion of this positive action.

Pilot projects have also been started in the public sector of some Member States, such as the United Kingdom, France and Belgium, and the Commission hopes to some extent to coordinate the Community approach in this area. I must add that the Commission itself has made a commitment to act in this area; it

has started a positive action programme, to be implemented by an equality committee composed of representatives from both the administration and the trade unions.

The third area in which the Commission has attempted to promote de-segregation of the labour market is the promotion of local initiatives for women. One of the major areas of Community action in the battle against unemployment is the promotion of local initiatives, in particular cooperatives, which can be particularly useful for combating women's unemployment by giving them more responsibilities, often more freedom in working time, and better salaries than in other areas. These local initiatives for women are integrated in a support programme. The Commission helped these initiatives with financial grants; it also created an experimental network to facilitate the exchange of information on these experiments. This in my view is really the kind of concrete initiative that the Community should support, instead of giving money in all directions; it is better to directly support initiatives which we know will give jobs to women and will raise their level of responsibilities.

I should also add on this issue that the Council of Ministers last year adopted a Resolution which agreed to take a whole series of measures to combat women's unemployment, and recognized that women's unemployment is more perturbing than

men's unemployment and requires specific action, in particular positive actions.

Positive action initiatives have also been started in three other areas. First of all as regards migrant women, who are discriminated against in two ways: as women and as migrants. This is linked to their whole social and structural climate, which does not encourage their integration into working life. In order to tackle this complex and politically delicate problem, the Commission has analysed the legal and administrative discrimination which women have to face; it has also reviewed good examples of actions on vocational training for women, with a view to stimulating initiatives which help to integrate women into working life.

The second field is the whole area of promoting a better share of responsibilities between men and women on both family and occupational issues, which is fundamental for the promotion of equality. The Parental Leave Directive is clearly linked to this better sharing of occupational and family responsibilities. Initiatives on child-care facilities and crèches have also been taken. After a study on the development of these facilities, the Commission concluded that in the present economic situation the trend was rather against the development of such provision, except in two Member States which have given priority to the development

of such facilities. This clearly demonstrates that political will is sometimes sufficient to counteract unfavourable circumstances; a point worth recalling at this juncture. There now seems to be wide demand for a Directive on this issue. I personally feel that this would be both technically difficult and politically inadvisable, but the Commission might well be able to develop a kind of network of people responsible for these kinds of facilities, in order to encourage Member States not to make their budget cuts directly in this area, but to consider a redistribution of their economic austerity measures.

As regards the promotion of women in the decision-making process, the statistics are quite clear: there are very few women at the top levels, in particular at the political level. The Commission carried out an interesting sociological study on four countries of the Community, which reached the same conclusion. More to the point, this study indicated ways in which positive action may be taken to improve this situation. In some Member States, for example, certain parties have quotas for women. Recruitment methods are much more favourable to women in some political parties than in others. This kind of measure could certainly be taken as an inspiration.

Last but not least comes the field of information and action to raise public awareness of these issues. Before any

action is taken, be it legal or positive, the ground has to be prepared, because if society is not ready to respond to these initiatives, then they will simply have no practical impact. The Commission therefore makes great provis

brochures and tries to inform a maximum of people of its activities in various fields. The Review "Women of Europe", published by the Directorate-General for Information, tries to promote some of these ideas. More and more, the Commission also tries to reach the people who really have decision-making power. The main targets for the time being are lawyers, for it has been noticed that the equality Directives are applied in very different ways by national case-law. Some extremely interesting cases show that in this area emotional and structural ideas can have a negative or positive effect on the final decision. It might therefore be useful to inform, and to discuss with lawyers the correct interpretation of both Community and national legislation in the area of equality.

The second target category is the media. At the moment, the EEC's information policy is quite limited, both for political reasons - the Member States do not want to be overwhelmed by Community publicity - and for budgetary reasons. Community access to television in particular is much more limited than that of national governments. It was therefore decided to intensify action in this area by holding seminars with the television

companies on issues such as womens' employment in TV organizations (how many women are working and where) or womens' image in TV programmes, and in particular in TV news, series, and advertising. Discussions with senior TV executives will also take place to see how the employment and the image of women in television may be improved, for it is clear that this is an area in which information and social structures have a chance to be changed.

The Commission is also pursuing another strategy, which consists in integrating the women's dimension into general policies of the Community. Women's policy must not be a ghetto, but ought to be integrated into a more general policy, and particularly in social policy. The Commission has been quite successful in this respect. In most of the initiatives that the Community has recently taken in the social area, the women's dimension has been taken into consideration. I would mention, for example, the recent Communication on migration, where one of the main aspects for Community cooperation was stated to be the woman's better integration in social life. I should also mention youth policy, which has become one of the highest priorities of social policy; here too the necessity of positive action for young women and young girls has been one of the elements of the policy recommended. As regards the social impact of new technologies, it has been recognized that women are more affected

than men by their introduction, and usually less technically prepared for the new jobs linked with them. In this context, it is also worth mentioning the local initiatives policy described earlier. With all these measures, the Commission has tried to expand beyond the equality sphere stricto sensu; this seems to be a better long-term approach towards integrating both men and women into general social policy.

Another matter which deserves our attention is the way the Commission cooperates, or seeks to establish a dialogue, with interested groups. It is true that in such a delicate and complicated area bureaucracy cannot be expected to do everything by itself. Women's associations and women's groups certainly represent interlocutors with which the Commission pursues useful dialogue. But the Commission has also tried to expand its cooperation with interested groups by the creation of an Advisory Committee on Equal Opportunities composed of national bodies in Member States dealing with the same subject. This Committee advises the Commission on its policy and follows up the implementation of the Community policy. The second major forum for dialogue is of course the European Parliament, in which women are better represented than in national Parliaments; probably because it is perceived as less important than national Parliaments. It is also the only Parliament where a permanent Women's Committee deals with women's rights and women's policy

and acts as an extremely powerful and dynamic lobby, sometimes exerting great pressure on the Commission.

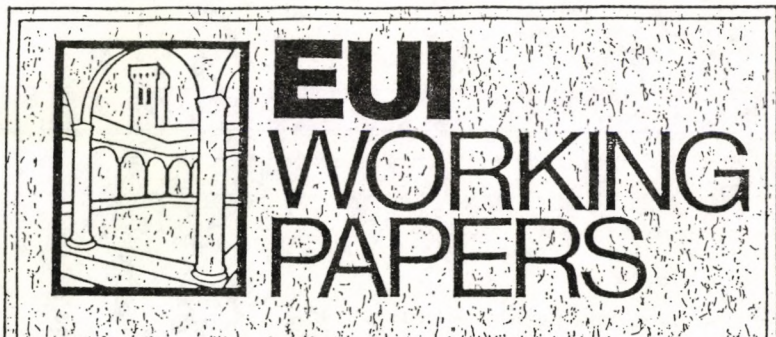
The third group is composed of the social partners. The trade-union women's groups are also quite active; the action programme in part reflects their proposals. As I said earlier, difficulties tend to be more serious with the employers, owing to the general situation of the social dialogue at the moment, but the response can be extremely positive when the Commission carries out action in direct collaboration with private firms. It might be useful to draw the conclusions from these experiments and revise the general conception of social dialogue: is it really effective to go through the normal structures, or should we try a more informal basis? This is certainly a major question for the years to come.

I should like to conclude by returning to my opening remarks. It is extremely interesting to see how, with a very limited legal starting-point, Community action has been able to expand in an area which a priori does not seem a priority for Community policy. Equal Opportunities for Women have become in fact one of the most advanced sectors in Community social policy. This evolution must be linked to different factors, amongst which the interest of certain persons inside the Commission has certainly played a considerable role. However, the role of the

European Parliament should not be neglected. The Women's Rights Committee plays an important role: its members continually press the Commission to take action which may enable them to exert some influence - albeit in an indirect way - on the Community legislative process. The European Parliament may have quite a significant impact on the promotion of equal opportunities.

For some time, the general context was rather in favour of this type of action. In the 1970's, Member States demonstrated a real willingness to promote employment, particularly young people's employment, because they were afraid of the negative birth rate tendencies. This context now has changed: in a period of crisis, the trend is now to put as many people as possible at home, particularly women. We are therefore in the presence of contradictory trends that would favour a slowdown of the expansion of Community activities in this field, on the one hand, and negative trends in the Member States which give this policy a quite challenging role, on the other. No Member State dares to say that it wants to block this policy; but the measures they take may, in some cases, be negative. The Commission's role therefore becomes increasingly significant, since it keeps receiving complaints from various sources that its equal opportunities policy does not work. My view is that the response to this challenge must come from the Member States and from women's groups themselves, to which the Community policy has

given the right stimulation to work. I am perturbed at the current tendency to continually complain to the Commission, because I do not believe that the Community can do everything; it has to stimulate and to promote, but it cannot do much more than that. I am wary of a centralizing tendency which might be negative for the development of women's rights.



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