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# Integrating or Setting the Agenda? Gender Mainstreaming in the European Constitution-Making Process

## Abstract

*The European Union (EU) constitution-making process has adopted an “integrating” rather than an “agenda-setting” approach to gender mainstreaming. This argument draws on analysis of both the European Constitutional Convention and its product—the Constitutional Treaty. Five indicators of application of mainstreaming serve as reference points for exploring how it has been applied in the EU Constitutional Convention: a broader concept of gender equality, the incorporation of a gender perspective into the mainstream, equal representation of women, the prioritization of gender policy objectives, and a shift in institutional and organizational culture. The article provides a tentative explanation for the failure of the EU constitution-making process to adopt an “agenda-setting” approach to gender mainstreaming.*

## Introduction

Is gender mainstreaming in European Union (EU) politics applied with an integrationist or an agenda-setting approach? This question is explored with reference to the EU constitution-making process, which includes both the European Constitutional Convention, held from February 2002 to July 2003 as a preparation for the 2004

Intergovernmental Conference (IGC), and its product, the Constitutional Treaty (CT). The adoption of either of the two approaches to gender mainstreaming affects the process in different ways. An “agenda-setting” approach may have a stronger impact on the decision-making structures and process, as it aims at reorienting the mainstream political agenda from a gender perspective. By contrast, an “integrationist” approach may achieve a formal introduction of gender mainstreaming but not an effective implementation of it in policy practice, as it does not aim at challenging existing policy paradigms (Jahan 1995).

This article examines the convention’s approach to gender mainstreaming, taking as a starting point five indicators of application of the strategy: a broader concept of gender equality, the incorporation of a gender perspective into the mainstream, equal representation of women, the prioritization of gender policy objectives, and a shift in institutional and organizational culture. It concludes that an “integrating” rather than an “agenda-setting” approach to mainstreaming has been adopted and provides tentative explanations for this finding.

The study of the EU conventions<sup>1</sup> offers an opportunity for observing how gender has been mainstreamed in the EU policy-making process, in this case in foundational debates. The difficulties in ratifying the European Constitution, exemplified by the negative results of the French and Dutch referendums of 29 May and 1 June 2005, should not overshadow the importance of the EU conventions as such. Both are relevant moments in a long-term constitutional revision process, characterized by a progressive deepening of the European Union institutions.<sup>2</sup> These need revision both to effectively function in the context of an ever-enlarging union and to gain further legitimacy among the people. Thus, the issues that motivated setting up the two conventions are still relevant in the ongoing EU constitutional process, even if not all members ratify the Constitution.

Analyzing the extent to which gender has been mainstreamed in the constitution-making process is important not only due to the relevance of foundational debates of this type for setting the basis of the EU’s direction, scope, and functioning but also due to the need to assess the supposedly more democratic character of the process from a gender perspective. The procedures used for the drafting of the EU Charter of Fundamental Rights and the Constitution are considered more open and democratic methods of deliberation<sup>3</sup> than the usual decision-making process,<sup>4</sup> as proceedings have been made public, the mode of discussion has been more deliberative, and feedback has been sought from civil society.<sup>5</sup> Nevertheless, doubts have been expressed regarding the democratic credentials of the convention, as its members have not been directly elected by the people,<sup>6</sup> and both

the president and the Presidium<sup>7</sup> have been influential in steering the debates and biasing final results (Closa 2003).<sup>8</sup> One source of evidence for the convention's democratic credentials could be the extent to which gender has been mainstreamed, by "setting the agenda" rather than being merely "integrated" into existing policies.

### Gender Mainstreaming in the EU: A Strategy to Suit Any Vision?

Since it appeared in the European political arena after the 1995 United Nations (UN) World Conference on Women in Beijing, gender mainstreaming has raised high expectations, though also doubts, on the part of institutional and academic feminism, and low resistance, though also misunderstanding, on the part of policy-makers. The enormous potential of the strategy was both a strength and a weakness. It could extend responsibility for gender equality to new areas, such as finance or transport. It could favor the framing, implementation, and evaluation of policies with reference to the category of "gender." It could lead to the prioritization of gender objectives in the political agenda. This broad potential, however, risked its becoming an empty signifier that could be filled with a multitude of meanings (Council of Europe 1998), throwing into doubt the way in which gender mainstreaming could be achieved in practice.

EU policy-makers, who did not feel as threatened by gender mainstreaming as they had been with positive actions, waxed eloquent about the importance of integrating equality in all policies but then did little to implement the strategy. As a result, many of the gender policies implemented in European countries after 1995 were a mere continuation of previous policies (Behning and Serrano Pascual 2001). In the worst cases gender mainstreaming was interpreted as a replacement for specific gender policies and structures, in spite of warnings by the group of experts of the Council of Europe that this was a misunderstanding of the concept. In the European Union mainstreaming was taken at first as a good excuse for diluting gender expertise and dismantling the infrastructures that had been created to support gender policies (Stratigaki 2005). The fact that gender equality was now included in the mainstream led many to assume, incorrectly, that specific funds and programs for women should disappear, as there was no further need for them.

### The Dilemma of "Integrating" versus "Setting the Agenda"

European policy-makers did not perceive the revolutionary potential of gender mainstreaming, either because the definition of the concept is so vague that actors untrained in gender cannot grasp all

its implications or because of the way in which gender mainstreaming campaigners have framed the strategy in their effort to persuade decision makers to accept it. Hafner-Burton and Pollack (2000), in their study on the application of gender mainstreaming in the European Commission, argue that gender advocates have strategically framed gender mainstreaming to make it fit with the dominant frame of a given Directorate General (DG) in order to avoid potential resistance, particularly on the part of DGs such as “Competition” that are more market-oriented and less familiar with gender issues. Gender campaigners adopted the strategy of “selling” gender mainstreaming to the most reluctant DGs “as an effective means to the ends pursued by policy-makers, rather than as an overt challenge to those ends,” emphasizing the gains in “efficiency” rather than in equality that would derive from the introduction of gender in their policy areas (Hafner-Burton and Pollack 2000, 452–53).

However, the undesired effect of this strategic framing process was the adoption of an “integrationist” approach to gender mainstreaming that subverts the innovative meaning of the strategy, diluting its revolutionary character. Integrationist approaches to gender mainstreaming introduce a gender perspective into existing policy paradigms without questioning them (Jahan 1995). This watered-down interpretation of mainstreaming treats it as a strategy of equality like any other, ignoring its potential for transforming existing institutional and organizational processes. The strengths of this approach are an emphasis on the role of gender experts in policy formulation and the possibility to produce effective integration once the concept is accepted by regular policy-makers. Its focus on bureaucratic processes and the danger of “rhetorical entrapment” (Verloo 2001) are among its weaknesses (Squires 2005). Furthermore, integrationist approaches may succeed in formally introducing gender mainstreaming in EU policy, but they are not necessarily successful in effectively implementing the strategy in policy-making practices.

Jahan (1995) introduces another interpretation of gender mainstreaming, more faithful to its revolutionary potential: the “agenda-setting” approach. It implies a transformation and reorientation of existing policy paradigms, by changing decision-making structures and processes, prioritizing gender objectives among competing issues, and reorienting the mainstream political agenda by rethinking and rearticulating policy ends and means from a gender perspective. In this approach “women not only become part of the mainstream, they also reorient the nature of the mainstream” (Jahan 1995, 13). Recognition of women’s voices via consultation processes is one of its strengths, though the approach risks reifying identities and thus undermining solidarity across groups (Squires 2005).

Scholars have also discussed a third “transformative” approach, whose strengths are its ability for addressing mainstreaming in the context of diversity and its emphasis on processes of democratic deliberation for bringing the concerns of different groups to the public agenda (Squires 2005). Its lack of gender specificity and concrete articulations is among its weaknesses. As with all feminist political dilemmas, the question of how to strategically frame gender mainstreaming to reach policy-makers and at the same time preserve the feminist revolutionary project of a society free from domination is difficult to solve and should be left open to ongoing debates among scholars and practitioners in the field. This article will limit itself to assessing the extent to which an “integrationist” or an “agenda-setting” approach to gender mainstreaming has been adopted in the EU constitution-making process.

### Gender Mainstreaming in the European Union

When the first convention began its work on the Charter in 1999, gender mainstreaming was already reflected in EU law, and it seemed difficult to ignore in a constitution-making process. According to the Council of Europe (1998, 15), gender mainstreaming required, in fact, “the (re)organisation, improvement, development and evaluation of policy processes, so that a gender equality perspective is incorporated in all policies at all levels and at all stages, by the actors normally involved in policy-making.”

The 1997 Treaty of Amsterdam (European Union 1997) recognized a prominent role for gender mainstreaming by establishing the promotion of equality between men and women as a task of the European Community (Article 2) and stating that in all its activities “the Community shall aim to eliminate inequalities, and to promote equality, between men and women” (Article 3.2). Gender mainstreaming was also reflected in the Third, Fourth and Fifth Commission’s Action Programmes for Equal Opportunities between women and men, and in the Commission Communication (96) 67 on “Incorporating Equal Opportunities for Women and Men into All Community Policies and Activities” (Commission 1996).

The main guarantee of the *acquis* on gender equality is Article 141 EC on the “principle of equal pay for male and female workers for equal work or work of equal value,”<sup>9</sup> which in its paragraph 141.4 allows member states to introduce positive actions. Finally, the Amsterdam Treaty (European Union 1997) introduced Article 13, which allows the council to take action “to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.”

## Requirements of Gender Mainstreaming

The definition of gender mainstreaming by the Council of Europe (1998) and a number of reflective studies (Beveridge, Nott, and Stephen 2000; Hafner-Burton 2000; Jahan 1995; Shaw 2000; Verloo 1999) provides us with a set of criteria for recognizing gender mainstreaming. These will serve as reference points for exploring how it has been applied in the constitutional convention.

### *Shift in Concepts: A Broader Concept of Gender Equality*

This concept includes not only formal equality but also equality de facto, a more holistic approach to gender policy that explicitly targets patriarchy by tackling the multiple interconnected causes that create an unequal relation between the sexes in the areas of family, work, politics, sexuality, culture, and male violence (Walby 1990). It requires a “gender perspective and not a focus limited to women’s issues” (Council of Europe 1998, 169).

### *Incorporation of a Gender Perspective into the Mainstream Political Agenda*

Reference to gender issues and considerations of how to limit the differential impact of provisions on women and men should be found in all policy areas. There must be evidence that the mainstream political agenda has been reoriented by rethinking and rearticulating policy ends and means from a gender perspective (Jahan 1995).

### *Inclusion and Participation of Women in Decision Making*

Gender mainstreaming requires an equal representation of women and men in decision-making institutions such as the European Commission, Parliament, Council, or Convention.

### *Prioritizing Gender Equality Objectives and Framing Policies of Relevance for Women*

There should be evidence that gender equality objectives and policies of special concern for women (for example, social policy) have been prioritized in the EU among competing objectives (in terms of financial and human resources, type of measures adopted, voting systems used, and so forth).

### *Shift in Institutional and Organizational Cultures*

This change involves three aspects: (1) policy process; (2) policy mechanisms; and (3) policy actors.

1. A shift in policy process means that the process “is reorganised so that ordinary actors know how to incorporate a gender

perspective” or that gender expertise is included “as a normal requirement for policy-makers” (Council of Europe 1998, 165).

2. A shift in policy mechanisms involves (a) the adoption of horizontal cooperation on gender issues across all policy areas, levels, and departments; and (b) the use of appropriate policy tools and techniques to integrate the gender variable in all policies and to monitor and evaluate all policies from a gender perspective.

3. The range of policy actors participating in the policy-making process is broadened to include, apart from policy-makers and civil servants, gender experts and civil society.

## Mainstreaming Gender in the EU Constitution-Making Process

### *A Broader Concept of Gender Equality*

The Charter of Fundamental Rights (CFR) includes equality as a European Union value and refers to equality between women and men and nondiscrimination on grounds of sex in Article II-83 and II-81.1, respectively, while it also mentions the sharing of work and family responsibilities in Article II-93. In the same way as it opens opportunities for a broader concept of gender equality, the ambiguous framing of Article II-83 also raises doubts concerning the scope of equality provided by the Charter. Its first paragraph states, “equality between women and men must be ensured *in all areas, including employment, work and pay*.” The extension of gender equality to all areas represents progress compared with an *acquis* mainly centered on equality at work. However, the added clause “including employment, work and pay” reorients the application of equality to the usual labor-related areas of EU gender policy. The way in which judges will interpret the article will determine the scope of the provision.

Moreover, Article II-83’s mismatch with the *acquis* reveals some of the limits of the Charter’s concept of equality. Unlike Article 141 EC on equal pay, Article II-83 CFR is not directly effective; it is a “general statement of intent” rather than a “rights conferring measure” (León, Mateo Diaz, and Millns 2003, 13), and it does not include any positive obligation to promote gender equality as Articles 2 and 3.2 EC do (McCrudden 2003). The reference to positive actions included in Article II-83 falls short of the *acquis* in two senses. First, the Charter treats positive measures as a derogation from the principle of equality rather than as means to achieve substantive equality, as Article 141 EC prescribes in its first sentence: “With a view to ensuring *full equality in practice* between men and women in working life....” Second, while Article 141 EC allows for

positive actions even “*to prevent or compensate* for disadvantages in professional careers,” Article II-83 limits the possibility of adopting positive actions to situations in which one sex is underrepresented and not as a “preventive or compensatory mechanism even when no under-representation of one sex is evident” (León, Mateo Diaz, and Millns 2003, 13).

Further reference to gender equality can be found in Article II-81.1 CFR, which prohibits discrimination on several grounds, including sex. The list of types of discrimination prohibited in the Charter is wider than that of Article 13 Treaty of the European Union (TEU) (Article III-124 CT). Despite this progress, decisions based on Article II-81.1 CFR are subject to unanimity in council and European Parliament consultation, which makes agreement on a proposal difficult to achieve and gives the parliament a weaker decision-making role.

As concerns the articulation of a broader concept of gender equality, Convention II performs worse than Convention I (European Convention 2002d). From the presentation of the first sixteen articles of the Draft Constitutional Treaty in October 2002, it appeared that the concept of gender equality of Convention II was not so broad as to include equality among the values of the European Union. After months of lobbying by conventioners, representatives of civil society, the European Parliament Committee on Women’s Rights, and gender experts, “equality” (but not between women and men) was added to the European Union’s values in one of the last drafts of the Constitutional Treaty (European Convention 2003b) in June 2003. The fact that the value of equality had to be fought for instead of being taken for granted shows that Convention II had embraced a remarkably limited concept of gender equality.

Gender advocacy coalitions,<sup>10</sup> active during the process of Convention II, agreed on proposals for strengthening the legal basis on gender equality that often coincided with the final report of the Working Group on Social Europe.<sup>11</sup> These included equality between women and men as a value and an objective of the EU, the addition of “gender equality” to the list of policies of shared competence between the EU and the member states in the first part of the treaty, and the creation of a separate title covering gender equality in the third part of the Constitution. The petition to create a separate article on “non-discrimination on grounds of gender (or sex)” that would recognize that women suffer multiple discrimination due to their sex *and* other reasons, remained unanswered. The convention only responded by integrating the Charter within the treaty, referring to “equality” and “non-discrimination” among the values of the union in Article I-2, and “equality between women and men’ among the objectives of the union in Article I-3.

The *acquis communautaire* on gender equality was preserved as it is in the treaty with the addition of Article III-118, a nondiscrimination clause on several grounds that applies to the policies of the third part of the Constitution. This is a positive inclusion, although it differs from the main demands of gender advocates in favor of a nondiscrimination clause on grounds of sex. Moreover, the phrasing is vague, as it does not require commitment on the part of member states or a strong prohibition. The means for taking action against discrimination are those laid down in Article 13 TEU (Article III-124 CT), without any improvement in the procedures of decision making. Finally, Article 141 EC on equal pay for equal work has been reproduced as it is in Article III-214 of the Constitution, and Article 3.2 on gender mainstreaming is now part of the clauses of general application as Article III-116. This means that mainstreaming will cover all policy areas of part III of the Constitution, including Common Foreign and Security Policy and Justice and Home Affairs. A new general clause III-115 claims that in the policies included in part III, the EU will take into account the objectives of the union (equality and nondiscrimination among them).

In sum, the *acquis* is safe, but the concept of gender equality has not broadened so as to cover other policies beyond employment; neither the legal basis of gender policy nor the strategy of gender mainstreaming have been strengthened. The inclusion of a general clause of nondiscrimination shows a shift in the concept of equality toward an emphasis on nondiscrimination policies, with developments that are currently difficult to foresee, also due to the weak legal instruments provided to decide on measures and to claim rights.

### *Incorporating a Gender Perspective into the Mainstream*

To satisfy this requirement we should encounter not only a reference to gender mainstreaming like Article 3.2 TEU (Article III-116 CT) but also the application of a gender perspective to all areas and a gender-sensitive reorientation of the political agenda. Both the Charter and the Constitution contain relevant omissions at least in the areas of violence, asylum, sharing of work and family responsibilities, health, culture and education, budgeting, and security and defense policy.

Violence against women has not been explicitly addressed in the Constitution. Article II-64 of the Charter prohibits “torture, inhuman or degrading treatment or punishment.” However, the adoption of a gender perspective on violence would have also specified that female genital mutilation, rape, or domestic violence are forms of “inhuman or degrading treatment or punishment.” The only reference to gender violence is a declaration (13 re Article III-116) on the European

Union's aim to combat "all kinds of domestic violence," introduced in the June 2004 IGC at the request of the newly elected Spanish socialist government. Despite the possible positive developments of the declaration, the measure, particularly when read together with Article III-269.3 on family law with cross-border implications, is not legally binding.

Provisions against trafficking have received a more explicit treatment by both conventions. Article II-65.3 CFR prohibits trafficking in human beings, and the explanations provided in the Constitution clarify that the article will be used to combat trafficking in women and children. In section 4 on judicial cooperation on criminal matters of the Constitution, Article III-271 (Article 17 TEU) allows the introduction of rules for combating the traffic "of human beings and sexual exploitation of women and children." Similar is the text of Article III-267 CT, in the section on "Policies on border checks, asylum and immigration." No analogous progressive treatment was provided to grant the right of asylum to women who seek to escape from gender-specific forms of persecution imposed by law, religion, or social norms.

The sharing of work and family responsibilities between the sexes has been addressed in the Charter (Article II-93.2) but not in the Constitution. It is true that once the Constitution has incorporated the Charter, there would be no need for replicating provisions. However, the inclusion of a measure on the reconciliation of family and work in a section like "free movement of workers" could promote changes in the organization of work that would be required to allow the equal involvement of women and men in family and labor responsibilities.

A gender perspective is also absent in policies such as health, culture, and education, where the EU can take "coordinating, supplementary or supporting action," but which are mainly of national competence. The European Women's Lobby (EWL) had asked in its contribution to Convention I to maintain reproductive health services at an affordable price for women, considering maternity as a matter of social concern. Article II-95 of the Charter and the part on public health in the Constitution omit any reference to reproductive rights. In the chapters on culture (Article III-280) and education (Article III-282) of the Constitution, no reference is made to measures for combating cultural gender stereotypes and for promoting gender equality and nondiscrimination at all educational levels and in cultural production.

Finance is a policy area where the integration of a gender perspective could have a substantive impact on women's conditions. Gender budgeting has been introduced in the guidelines of the European Structural Funds 2000–2006, together with a review of the gender

dimensions of tax/benefit systems in EU countries. Gender budgeting aims to produce a budget in which gender has been “mainstreamed” by analyzing public expenditure and methods of raising public revenue from a gender perspective and identifying the implications for women as compared to men (Elson 2003). In “The Multiannual Financial Framework” and “The Union’s Annual Budget” of the Constitution, there is no reference to gender budgeting or gender equality considerations.

Finally, a gender perspective has not been incorporated in the “Common Foreign and Security Policy” and “Common Security and Defence Policy” of the Constitution. UN general secretary Kofi Annan has recognized women’s crucial role in conflict resolution and their fundamental contribution to the consolidation of international peace and security. However, claims Annan, without strengthening women’s participation in negotiations and decision-making, their peacekeeping potential is lost.<sup>12</sup> To this aim, the UN Security Council has unanimously adopted Resolution 1325 on “Women, peace and security,” which establishes the need to protect women in armed conflicts and their central role in conflict prevention, peace construction, and peacekeeping. No similar provision has been included in the European Constitution.

With the exceptions of trafficking and, only in a marginal way, the sharing of family and work responsibilities, all other areas of the Constitutional Treaty considered do not show any consistent integration of a gender perspective. Nevertheless, the text includes formal provisions on gender mainstreaming. The convention appears committed to promoting gender mainstreaming but not yet ready for putting it into practice in the context of its own constitution-making process.

### *Women’s Representation in Decision Making*

Expectations that women would be better represented in the more open and democratic process of the conventions were soon undone. The percentage of female representatives in the convention that drafted the Charter was 16 percent. The criticisms of gender campaigners regarding the underrepresentation of women in the Charter did not affect selection procedures of Convention II: in February 2003 women represented only 17.14 percent (18 of 105 members) of the body that drafted the document that could become the future European Constitution. Women comprised only 20 percent of the representatives of the heads of state or government of the member states (3 of 15), 10 percent (3 of 30) of the representatives of national parliaments, 0 percent (0 of 2) of the representatives of the European Commission, 31.25 percent (5 of 16) of the representatives of the

European Parliament, 30.77 percent (4 of 13) of the representatives of the governments of the accession countries, and 11.54 percent (3 of 26) of the representatives of the national parliaments of accession countries. None of the female representatives in Convention II occupied a leading position as president or vice president. Only two out of the twelve members of the Presidium were women, and only one of them, Gisela Stuart, chaired one of the eleven working groups. These figures are nowhere near the 40 percent recommended by Commission Decision 2000/407 (Commission 2000b). Commenting on this low degree of female representation in Convention II, President Valéry Giscard wrote, “*Elles compensent cette situation d’infériorité numérique par la forte personnalité de beaucoup d’entre elles*” (Giscard d’Estaing 2002).

Not only did the existing EU provisions recommending a gender balance in decision making have almost no effect on mechanisms of selection of representatives of the two conventions, but even member states that have a relatively good record of women representatives in their national parliaments sent a much lower female representation to Convention II (León, Mateo Diaz, and Millns 2003). Women are slightly more represented among alternates than among members in all groups, that is, in total 20 percent of alternates were women, compared with 17.14 percent of members, in February 2003. These scant results reveal that one of the greatest obstacles that gender mainstreaming must face is the fact that the decision-making process, be it deliberative or based on traditional methods of negotiating, takes place in an environment in which power mechanisms are not gender-neutral.

#### *Prioritizing Gender Equality Objectives and Policies of Relevance for Women*

The inclusion of provisions on gender equality and nondiscrimination in the Charter and in the Constitution indicates that gender objectives have been integrated in both constitution-making processes. Social policy provisions were included in chapter III on equality and chapter IV on solidarity of the Charter, and the Constitution maintains the social measures contained in the *acquis*. In spite of their inclusion, the type of guarantees that have been granted to gender equality provisions is not very strong. Article II-83 CFR on equality between women and men has no direct effect and is a measure of a programmatic nature (León, Mateo Diaz, and Millns 2003). The establishment of equality as an objective and a value of the Union, as well as the general mainstreaming clause III-116, are important as they communicate a sense of positive obligation to promote gender equality in all EU policy areas and structures. The guarantees of Article III-214 (141 EC) on equal pay are also strong since the article is directly effective. Article

III-118, the general antidiscrimination clause, may affect all policy areas but has weak means to implement measures.

The struggle over the inclusion of the value of equality during the process of Convention II reveals that gender was not especially prioritized. A statement by vice president of the convention Klaus Hänsch, at a special meeting of the European Parliament Committee of Women's Rights on 2 October 2002, exemplifies this state of affairs: "The battle is not so much to put more in, but to maintain what exists" (European Parliament 2002a). Mr. Hänsch was concerned about the fact that debates on EU competencies and the principle of subsidiarity could weaken the existing *acquis* on gender equality with the argument that as gender policy was sufficiently developed in the member states there would be no need to include it in the European Constitution. Whether the risk of losing existing equality rights in the Constitution was real, the fact that equality was added to the values of the Union in one of the last drafts (CONV 797/03, European Convention 2003b) speaks volumes regarding the consideration of gender as a priority for Convention II.

The treatment of social policy in the process of Convention II is also indicative of the priorities of the Presidium and its president on issues of special relevance for women. The establishment of the Working Group on Social Europe encountered some resistance on the part of the Presidium, particularly the president. The group was not created from the beginning together with the other working groups, and when, after intense lobbying and protest, it was finally formed, its deliberations were not taken into account in the first sixteen articles of the Draft Constitutional Treaty issued by the Presidium (CONV 528/03, European Convention 2003a; Lombardo, forthcoming). Although some of the measures proposed by the Working Group on Social Europe were finally included in the treaty (in a watered-down version), the attitude maintained by the Presidium toward equality and social issues during the process is indicative of the fact that social issues and actors concerned with them (such as women) were *de facto* marginalized, rather than prioritized, in the discourse of the convention.

#### *A Shift in Institutional and Organizational Culture*

The fifth requirement of gender mainstreaming is a shift in institutional and organizational culture that should be observed in three aspects of EU constitution-making: policy process, mechanisms, and actors.

*Policy process.* As has been noted, the reorganization of a policy process so that actors take a gender perspective into account can

mean that “the policy process is reorganised so that ordinary actors know how to incorporate a gender perspective” or that gender expertise is included “as a normal requirement for policy-makers” (Council of Europe 1998, 165).

The president of the Committee on Women’s Rights of the European Parliament (2002a), Anna Karamanou, in a letter addressed to the president of Convention II, Valéry Giscard, and distributed to all conventioners in June 2002, made the following proposals for reorganizing the policy process “to compensate for the under-representation of women amongst the conventioners and to aim at an outcome of the Convention that reflects the aspirations of societies composed of active and concerned women as well as men”:

In each of the working groups currently created, one person should be specifically mandated to incorporate a gender perspective into the issues under consideration.

A working group on gender issues should be created and presidencies of the working groups should be equally distributed between women and men.

Gender expertise should be ensured in the secretariat of the Convention.

Conventioners should also be encouraged to call on existing gender expertise (in the Committee on Women’s Rights and Equal Opportunities, in the European Commission, in academic institutions and NGOs [nongovernmental organizations]).

A group of experts could monitor the work of the Convention from a gender perspective (European Parliament 2002a).

None of these proposals was taken on board. Only one woman, Gisela Stuart, led one of the eleven working groups. Giscard’s reply to Karamanou’s letter avoided answering the proposals and instead addressed a general, degendered appeal to the role of citizens’ “vigilance” over the work of the convention (European Parliament 2002b, 2003). In spite of the efforts of gender advocates, Convention II did not bring evidence of a shift toward a reorganization of the policy process so that institutional actors could take a gender perspective into account.

*Policy mechanisms.* Evidence of a shift in policy mechanisms can be found in the use of horizontal cooperation on gender issues across policy areas and of tools for integrating a gender perspective and then monitoring and evaluating its integration in the policy process. Horizontal cooperation has been relatively easy in the conventions due both to the fact that these bodies had sufficiently defined tasks to

perform (more precise in the first than in the second convention) within a limited time span, and to the method of deliberation, based on the need to achieve consensus and a certain autonomy enjoyed by the members, that facilitated internal communication and debate. Convention II created eleven working groups on different issues, the results of whose deliberations were then discussed in plenary sessions. An analysis of the final reports of the working groups<sup>14</sup> (none of which concerned gender equality, as the Committee on Women's Rights had recommended) reveals that gender was not a transversal issue across the groups. Gender equality was debated only by the Working Group on Social Europe, the "Cinderella" of all the working groups of the convention, as Shaw has described it (2003). Rather than a horizontal approach to gender equality, there was a policy-specific approach limited to the social sector. With regard to the instruments for integrating, monitoring, and evaluating gender in all areas, Convention II did not adopt any of the methods proposed by the European Parliament Committee on Women's Rights to ensure gender expertise in the work of the convention and to evaluate its results from a gender perspective.

*Policy actors.* The process of the Charter set a precedent in the opening of channels of consultation with civil society that was repeated in the constitutional convention. Actors of civil society could send their contributions to the debate via the Internet, and both conventions organized hearings with representative organizations of civil society. The Constitution includes Article I-47 (IGC 87/2/04 REV 2, Conference of the Representatives of the Governments of the Member States 2004) on the 'Principle of participatory democracy,' which introduces the concept of civil dialogue in the treaty, although not with the conditions demanded by organizations of civil society. However, it is not clear that this change has occurred to comply with gender mainstreaming, as it is part of the moves toward governance that the EU is making to open the policy-making process to a wider range of actors (Commission 1998, 2000a, 2001).

Civil society groups in both conventions were active on gender. In Convention II gender equality was a transversal issue across civil society organizations: during the hearings of 24–25 June 2002 five contact groups out of eight addressed gender equality issues in their demands to the plenary session of the convention (CONV 112/02, 120/02, and 167/02, European Convention 2002a, 2002b, 2002c, respectively).<sup>15</sup> Opening the EU institutional process to civil society actors can reinforce debates on gender equality also within the European institutions. However, gender equality could become a priority for civil society but not for EU institutional actors. Not only has civil

society no decision-making power in the policy process, but also the role that Convention II accorded to civil society was of a “passive” rather than an “active” nature, with little capacity to influence process and outcomes. Rather than being mainstreamed into the political agenda, gender equality could run the risk of becoming a marginalized issue in the hands of equally marginalized actors. Moreover, the few women’s groups who were actively engaged in the convention process were European-based organizations, more familiar with the EU institutional context and language. The framing of the convention discourse mainly in institutional terms *de facto* excluded nonspecialized actors and issues from the debate (Lombardo, forthcoming).

### Conclusions

The foregoing analysis provides evidence that gender mainstreaming has been integrated in Convention II but has not managed to reorient the mainstream of the constitution-making process, as an “agenda-setting” approach to the strategy would recommend (Jahan 1995). In spite of the supposedly more democratic character of the European constitution-making process that produced the Charter and the Constitution, the convention has maintained strong patriarchal elements typical of most political contexts. Except for the integration of formal concepts of gender mainstreaming in the text, the EU constitutional convention has failed to effectively apply the strategy to its own policy-making experience. Different hypotheses can be advanced to explain this failure.

Stratigaki argues that the reasons for the failure of a deeper incorporation of gender mainstreaming in the European political process lie in the resistance by EU dominant policy frames, which are based on a hierarchical gender distribution of power. European male-dominated contexts react to challenges of personal interests and power positions in the EU institutional setting posed by a more radical concept of gender mainstreaming both by eliminating positive actions and making gender invisible in political processes (Stratigaki 2005). Although this could be part of the explanation, the resistance to mainstreaming gender in the EU constitution-making process seems rather a case of prioritization of some other goal in the contested process of “norm-setting” (Elgström 2000) that took place in the constitutional convention. Rather than being framed as an explicit opposition to the goal of gender equality, the discourse of the convention privileged institutional and neoliberal discourses over substantive social policy issues.

The fact that the convention discourse was more institutionally driven has limited wider debates about the nature of the EU project and has marginalized actors who are willing to discuss more substantive

questions regarding the type of polity aimed at and the extent to which gender is being mainstreamed in EU policy-making. The passive role granted to civil society and the unfair treatment of social policy, with regard to both the late creation of a working group on the issue and the lack of consideration of its conclusions on the part of the Presidium, exemplify this attitude (Lombardo, forthcoming). In addition, the neoliberal mindset of the EU operated as a tacitly accepted broad setting for discourses taking place in the convention, by supporting a general assumption about what should be discussed. This means that issues and perspectives that accepted the existing neoliberal trend were prioritized, while social and gender issues that challenged this model were marginalized, and the actors defending them were constrained to adopt “realistic” (that is, within the dominant paradigm) standpoints to participate in the debate.

The prioritizing of institutional and neoliberal frames depended on different factors: the focus of the convention mandate on institutional reform contributed to diverting attention from substantive issues such as gender equality; the priority given to debates on EU competence and the principle of subsidiarity encouraged the perception that gender equality provisions could be limited in the constitutional text (since gender equality is a national competence), as Vice President Hänsch’s concern suggested; the Presidium, and particularly the president, exercised a strong influence on steering debates and biasing final results toward the privileging of institutional and neoliberal discourses and the neglecting of gender and social issues.

Another reason for explaining the gender blindness of the constitution-making process could be the low number of female members of the convention. As Agnès Hubert<sup>16</sup> made clear, only 18 women out of 105 conventioners is a small number to make your voices heard. Although not all women speak for gender equality, it was difficult for the few female members who did so to raise gender equality issues and to have a receptive audience on these matters, considering that conventioners had two to three minutes to speak on the basis of an agenda that was decided by the all-male Presidium.

Competing frames, “norm-setting,” and male-dominated EU institutions are, without any pretension of being exhaustive, tentative reasons offered to explain the observed resistance to adopting gender norms in the EU constitution-making process. In view of the treatment reserved to gender mainstreaming in the latest EU foundational debates, gender advocates need both to deepen the reflection on the obstacles opposed to the strategy and to devise ways for effectively implementing gender mainstreaming in the European political arena. The challenge of letting gender set the mainstream political agenda of European policy-making processes still needs to be taken on.

## NOTES

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1. Though the main focus of this article is on the EU Constitutional Convention, the EU Charter of Fundamental Rights is taken into account both because it sets an institutional precedent for the establishment of Convention II, and it has been incorporated in the Constitution. Reference to articles of the charter will respect the numbering established in the Constitution.

2. Following the Nice Treaty's call for "a deeper and wider debate about the future of the European Union," the Laeken European Council adopted on 15 December 2001 a declaration that proposed four issues to guide the work of Convention II: division and definition of competences in the EU; simplification of the EU's instruments; more democracy, transparency, and efficiency in the EU; and simplification and reorganization of the treaties.

3. Democratic deliberation "transforms preferences and compels actors to give reasons for why they seek a particular outcome, regardless of their resources. Deliberation is based on arguing which rests on reason giving and is considered superior to bargaining and voting" (Eriksen and Fossum 2000, 18).

4. The establishment of a convention for drafting the Charter and preparing the 2004 IGC was a new procedure in EU constitutional practice. Previous intergovernmental conferences had been preceded by an informal preparatory stage in which working groups prepared documents with almost no publicity or dialogue with civil society.

5. "Civil society" includes the market, voluntary associations, and the public sphere, but with the exclusion of the state. It refers here to representatives of civil society who sent their contributions to the convention via the Internet (Lombardo 2003).

6. Convention members have been selected by the European Council among representatives of the heads of state and/or government and appointed representatives of European peoples in different policy-making bodies.

7. The Presidium, the leading body of the convention, is composed of the convention chairperson and vice chairpersons and nine convention members who represented the governments that held the presidency of the European Union during the convention, national parliaments, the European Parliament, the commission, and an invited representative of the candidate countries.

8. Debates were based on documents prepared by the secretariat and Presidium, and the president had a key role in identifying the existence of consensus (the convention method for taking decisions) in the opinions of speakers.

9. Article 141 EC is "directly effective," which means that it is enforceable by individuals in domestic courts both against the state and against private employers.

10. Gender coalitions included the European Parliament Committee on Women's Rights, conventioners (the Working Group on Social Europe and European Parliament women representatives such as Anne Van Lancker,

Sylvia-Yvonne Kaufmann, and the alternate Lone Dybkjaer), Jean Monnet professors, and civil society organizations such as European Women's Lobby (EWL), European Women Lawyers Association (EWLA), Association of Women of Southern Europe (AFEM), and Women of Europe Citizens Network (RCE).

11. See Working Group XI on Social Europe (2003).

12. See Secretary General Kofi Annan's (2001) message for International Women's Day, 8 March 2001.

13. The eleven working groups of Convention II included Subsidiarity, Charter of Fundamental Rights, Legal Personality, National Parliaments, Complementary Competencies, Economic Governance, External Action, Defence, Simplification, Freedom, Security and Justice, and Social Europe.

14. Contact groups are umbrella organizations of groups of similar associations that were in charge of making contact with members of the convention and that, according to the convention, had to represent "major sectors of interest." Each contact group selected representatives who had to speak during the hearings.

15. Agnès Hubert was at the time liaison person in the secretariat of the European Parliament Committee on Women's Rights on secondment from the commission.

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