

THE COSTS OF NON-GENDER EQUALITY: THE REPORT ON SPAIN.

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Introduction.

The purpose of this report is double. On the one hand, we study the reform of Spanish legislation in line with the European Union (EU) Directives on Gender Equality. On the other hand, we assess the social and economic effects of the aforementioned law reform.

This report is organized in three parts. In part I we study the impact of the EU gender equality legislation on Spain from 1975 to date. In part II we identify the dimensions of gender equality legislation that have not been achieved yet in the Spanish labor market. In part III we make some recommendations for transforming the Spanish labor market in a more egalitarian space from the gender point of view, in the light of the possible recasting of EU Directives on equal treatment.

PART I

AN ASSESSMENT OF THE IMPACT OF THE EU GENDER-EQUALITY LEGISLATION TO DATE

Introduction

This first part contains an assessment of the impact of the EU gender-equality legislation on Spain from 1975 to date. While studying such an impact, we focus on the extent to which the Spanish labor law has changed in accordance with the EU gender-equality requirements (Section 1).¹ Then, we identify the factors that facilitated the reform of Spanish legislation in line with the principle of gender equality mandated by the EU (Section 2). Due to scarcity or even lack of studies on the implementation of Spanish gender-equality legislation, we can only tentatively assess the real impact of the law at the level of society (Section 3), employers (Section 4) and individuals and households (Section 5).

1. The Transformation of Spanish Law in accordance with EU Gender Equality Requirements

Feminist research on Spain has studied the influence of the EU on domestic policy making related to gender equality in very general terms. Feminist scholarship on Spain has paid only marginal attention to the more concrete process of adapting Spanish law to EU legal standards (with the exception of Valiente 2003). As said, a comprehensive and in-depth assessment of the impact of the EU on Spanish policy making relating to gender equality in the labor market has not yet been undertaken. Some studies on gender equality policy making in all areas of public policy (Martínez, 1997) or regarding employment (Valiente, 1997) do not mention the influence of the EU on national policies. Other works state that the impact of the EU can be traced mainly in the Spanish Equality Plans,² which reflect European Action Programs on Equal Opportunities for Women (Arranz, 2000:41;

¹ The influence of the EU gender equality law on Spanish law follows closely: Valiente (2003).

² An Equality Plan is a policy instrument. It contains a set of gender equality measures to be put in practice by different ministries and state units. The Spanish government has launched four Equality Plans (Instituto de la Mujer, 1988; 1993;

Gil 1996:186-191; González and Almarcha, 1993:147-149; Sensat and Varela, 1998:346-347; Threlfall, 1996:126).³ To our knowledge, in the 1990s there was only one study which compared EU legislation with Spanish legislation regarding some dimensions of gender equality in employment. After analyzing the issues of equal pay, maternity leave, parental leave and the reversal of the burden of the proof in post-authoritarian Spain, Threlfall (1997:21-22) concluded that

"There was no actual legal or policy deficit in this area -as long as a caveat regarding effectiveness of enforcement is made...Spain adjusted its laws on sex equality during the transition and constitutional process, and prepared for the need to take on board this part of the *acquis communautaire* during the long wait for entry."

As this report develops, a traditional gender order (male breadwinner/female homemaker division of labor between both genders) was promoted by the right-wing authoritarian regime which governed Spain from the mid-1930s to 1975. In 1977, the first democratic elections were held, and Spain requested to be a member of the EU.⁴ In Spain, part of the revision of labor law according to the principle of gender equality was undertaken before the country's accession to the EU in 1986. Legal reforms continued afterwards in order to make working women and men equal before the law. Spanish policy makers reformed labor law in an environment conducive to the modification of legislation on labor matters because public opinion was highly supportive to the EU (up to the 1990s). Four structural and short-term characteristics of the Spanish political system also facilitated labor law reform because: (i) the power to establish main guidelines in labor legislation belongs to only one site (the central state) instead of a plurality of state units; (ii) the Executive is the main political actor of the central state and can therefore carry the initiative in many regards; (iii) the party in office had an absolute majority of seats in Parliament between 1982 and 1993 and since 2000; and (iv) the number of women in political decision making positions has been increasing (although sometimes with interruptions). Policy-makers have adapted labor laws to the precept of equality between the genders in order to implement commitments included in the electoral programs of their parties. These commitments reflected the view that women and men had to be equal before the law in the group of economically developed countries with stable democracies to which Spain wished to belong. Although with different emphasis, these views were embraced by all the main political and social actors. Thus, the EU was a factor facilitating labor reform in Spain, but not the main causal factor.

Between 1975 and 1997 nine gender equality Directives were adopted at the EU level on: Equal Pay 75/117/EEC; Equal Treatment 76/207/EEC; Social Security 79/7/EEC; Occupational Social Security 86/378/EEC; Self-Employment 86/613/EEC; Safety and Health at Work 92/85/EEC; Parental Leave 96/34/EC; Occupational Social Security 96/97/EC; and Burden of Proof 97/80/EC. In this section we study in depth the transformation of Spanish law in accordance with the precepts mandated

1997; 2003) to be implemented between 1988-1990, 1993-1995, 1997-2000, and 2003-2006 respectively.

³ The European Commission has undertaken Action Programs on Equal Opportunities for Women. The Action Programs propose policy initiatives and support and encourage research and women's networks (Hoskyns, 1996:142).

⁴ The EU had different names in the past (European Economic Community and European Community). For the sake of simplicity, only the expression "European Union" and its acronym "EU" are used in this report.

by these nine Directives. Two more Directives on Equal Treatment were approved after 1997: Directive 2000/78/CE and 2002/73/CE. Given the short time between these two latter Directives and the writing of this report, we only examine an aspect of the 2000 and 2002 Directive: the treatment of sexual harassment in the work place.

As can be observed in Tables 1, 2, 3 and 4, the Spanish record of gender equality law reform concerning the labor market has been moderately positive. Regarding the form of adjusting to the EU norms, Table 1 shows that highly-ranked law provisions (the Constitution and Acts) have been used to transform Spanish labor market legislation in accordance with the principle of gender equality. The 1978 Constitution contains an important number of gender equality stipulations. Most Spanish gender equality provisions analyzed in this report are included in Acts.⁵

As for the timing of Spanish provisions (in comparison with EU norms), Table 2 shows that Spain had already adapted its national legislation to many EU legal requirements on gender equality before its accession in 1986. Afterwards, Spain has actively continued to transpose EU equality provisions to domestic law. Moreover, in some cases, Spanish law included gender equality stipulations even before the adoption by EU Directives. For example, the reversal of the burden of the proof was established in Spain in 1989-1990, and at the EU level in 1997 (Directive 97/80/EC).

Concerning what can be called the "quality" of Spanish pieces of legislation in comparison with the EU standard (above, at the same level as, or below minimum EU standards), Table 3 shows that in a relevant number of cases Spanish legal pieces related to gender equality in labor matters have established provisions above the minimum level set by EU Directives.

Finally, Table 4 shows the number of changes in Spanish legislation in response to EU norms. It is shown that the maximum number of changes is three, corresponding to the directives on equal pay and equal treatment. Even if some pieces of Spanish legislation were established previously to EU norms, the cost of transposing the EU directives is important in terms of the number of changes necessary to adapt the national legislation.

We now turn to the description of the transposition of the EU gender equality Directives to domestic law in post-authoritarian Spain. For the shake of clarity, we dedicate a sub-heading to each Directive, and present the main legal reforms in chronological order.

Equal Pay Directive 75/117/EEC--The principle of equal pay for equal work was recognized in Spain in the 1970s (before Spain's accession to the EU). However, the principle of equal pay for work of equal value was only recognized in 1994. Therefore, the transformation of the Spanish law in accordance with the Equal Pay Directive was moderately positive.

The 1978 Constitution explicitly prohibits wage discrimination against women (Article 35.1). The main pieces of labor legislation passed in post-authoritarian Spain also contain the prohibition of discrimination against women with respect to remuneration.⁶ The Constitution does not define wage

⁵ The highest-ranking laws after the Constitution are organic Acts (*Leyes Orgánicas*). An organic Act regulates, among other matters, fundamental rights and public liberties, and electoral arrangements. Acts (*leyes*) occupy the next position in the hierarchy of laws and regulations after organic laws (Newton and Donaghy, 1997:63-64). Bills become Acts when a simple majority in both Chambers is achieved in a final vote.

⁶ Article 10.2 of Act 16/1976 of 8 April, on labor relations; Article 28 of Act 8/1980 of 10 March, the Workers' Statute, among other laws.

discrimination. In contrast, until 1994 labor law used to define wage discrimination as different pay for the same work. It was only in 1994 that wage equality was understood as the same wage for the same work or for work of equal value.⁷

Equal Treatment Directive 76/207/EEC--Equal treatment for women and men as regards access to employment, vocational training and promotion, and working conditions was recognized in post-authoritarian Spain by the Constitution as well as the main statutes of labor law before the Spanish accession to the EU. On the other hand, according to the Equal Treatment Directive 76/207/EEC, equal treatment means the absence of direct as well as indirect discrimination on grounds of sex. However, the concept of indirect discrimination has not been explicitly included in the Spanish labor law.⁸ Thus the adaptation of Spanish legislation to include the equal treatment for women and men can be classified as moderately positive.

The Constitution not only states that nobody can be discriminated against in the labor market because of his/her sex (Article 35.1) but also affirms that all Spaniards have an equal right to jobs in the public sector (Article 23.2). As in the case of the principle of equal pay, the main labor laws contain the principle of equal treatment for women and men in the labor market.⁹

Social Security Directive 79/7/EEC--Generally speaking, statutory social security regulations have been fairly gender neutral in post-authoritarian Spain. As a result, in comparative terms, the transformation of Spanish statutory social security legislation to the EU equality laws has been a relatively easy and successful process. Two caveats are necessary here. According to Article 4 of the Social Security Directive (79/7/EEC), equal treatment is the absence of direct and indirect discrimination against one of the sexes. As stated above, the concept of indirect discrimination has not yet been included yet in Spanish law. On the other hand, the implementation of the 79/7/EEC Directive has often meant to recognize to men some social security benefits that women already had (Azkarate-Askasua, 1997:240-269).

As early as 1974, General Text on Social Security¹⁰ affirmed that social security includes "all Spaniards, regardless of their sex, civil status and profession, who perform jobs in Spain".¹¹ Furthermore, the Constitution states that "public authorities will maintain a public regime of Social Security for all citizens" (Article 41).

Women had traditionally been treated more favorably than men by Spanish statutory social security law with respect to some survivors' benefits. Some men appealed to the Constitutional Court asking to be treated as equal to women. In some cases, the Constitutional Court (CC) ruled in favor of

⁷ Article 3 of Act 11/1994 of 19 May, of the reform of the Workers' Statute and other labor laws.

⁸ The concept of indirect discrimination has been used in rulings by the Constitutional Court (Azkarate-Askasua, 1997:119-126).

⁹ Article 10.1 of Act 16/1976 of 8 April, on labor relations; Articles 4.2.c, 17.1 and 24.2 of Act 8/1980 of 10 March, the Workers' Statute; and Article 38.2 of Act 51/1980 of 8 October, on Employment, among other laws.

¹⁰ Article 7 of Decree 2065/1974 of 30 May.

¹¹ All translations from Spanish to English in this report are by María Luisa Moltó and Celia Valiente.

these male claimants, and legal reforms have followed CC decisions. For instance, the regulations that imposed tougher requirements on men than on women for receiving a widow(er)s' pension were overturned.¹²

Occupational Social Security Directive 86/378/EEC--To our knowledge, legal dispositions which explicitly state that women and men have to be treated equally by occupational social security schemes have not been passed in Spain. Some articles of the Constitution apply to occupational social security schemes, among them Article 14 on equality before the law of all Spaniards regardless of their sex, and Article 35.1 on gender equality in the labor market.

Self-Employment Directive 86/613/EEC--Spanish law explicitly included the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity before the approval of the 86/613/EEC Directive. Since 1970 all self-employed workers were mandatorily included in the special regime of statutory social security for self-employed workers regardless of their sex and civil status.¹³ The spouse of the self-employed worker and his/her relatives up to the second degree of kinship were also mandatorily covered by the social security of the self-employed worker if these spouse and/or relatives fulfill two requirements: that they participated in the self-employed activity in an habitual, personal and direct way; and they were not waged workers as a result of this participation. Subsequent pieces of legislation also included the principle of equal treatment of self-employed workers.

Safety and Health at Work of Pregnant Workers Directive 92/85/EEC--On the whole, the adaptation of the Spanish law to the content of the 92/85/EEC Directive has been positive, since part of the content (on maternity leave) was already included in the Spanish legislation in the 1970s above the EU standard, and another part of the content (on health and safety at work, and on the right to time-off for ante-natal examinations) was adequately incorporated into Spanish legislation in 1995.

Since the 1970s, Spanish legislation regulated paid maternity leave above the minimum standard set up by the 92/85/EEC Directive. Since 1989, working mothers who have previously been employed and have contributed to the social security system for at least 180 days within the five years previous to child birth are entitled to 16 uninterrupted weeks of paid leave. The number of years in which contributions were paid and their level (which is proportional to the salary) are used to calculate the so-called regulatory base (*base reguladora*). The amount received during maternity leave was increased in 1994 from 75% to 100% of the regulatory base. The right to return to one's job is guaranteed.¹⁴

¹² A derogatory disposition included in Act 26/1990 of December on social security non-contributory pensions suppressed article 160 of the General Legal Text on Social Security.

¹³ Article 3 of the Decree 2530/1970 of 20 August on the special regime of statutory Social Security for self-employed workers.

¹⁴ Article 25.4 of Act 16/1976 of 8 April, on labor relations, established 14 non-interrupted weeks of paid maternity leave (as the Directive does). Article 1.4 of Act 3/1989 of 3 March, on the extension of maternity leave to 16 weeks and other gender equality measures in employment, extended paid maternity leave to 16 weeks. Article 33 of Act 42/1994 of 30 December, on fiscal, administrative and social measures, increased the monetary benefit paid during maternity leave to 100% of the regulatory base.

Under the Constitution public authorities are charged with safeguarding health and safety at work (Article 40.2). The incorporation of the Safety and Health at Work of Pregnant Workers Directive 92/85/EEC into Spanish legislation recognised women's right to time off for ante-natal examinations was recognized. Furthermore, employers are required to assess the exposure to risks of pregnant workers and workers who have recently given birth. If the results of the assessment reveal a risk for the workers, employers must take the necessary steps to ensure that the exposure of those workers to risks is avoided.¹⁵ Finally, the dismissal of workers during pregnancy and maternity leave is explicitly prohibited.¹⁶ The timing of the approval of this prohibition dismissal was late, since the 92/85/EEC Directive had to be incorporated into domestic legislation no later than two years after its adoption.

Parental Leave Directive 96/34/EC--Spanish legislation on parental leave can be characterized in positive terms in comparison with EU legislation, since generally speaking the former is more comprehensive than the latter and was approved earlier. Unpaid parental leave above the minimum standard of the 96/34/EC Directive was recognized in Spain for women in 1970 and for men in 1980.¹⁷ This women's right also included in subsequent labor legislation enacted in post-authoritarian Spain.¹⁸ The same right to unpaid parental leave was recognized for men in 1980.¹⁹ Spanish legislation guarantees workers two days off at full pay because of birth of offspring or death of their relatives up to the second degree of kinship. Since 1999 workers have also been entitled to two days off at full pay because of accident, grave illness or hospitalization of their relatives up to the second degree of kinship.²⁰

Second Occupational Social Security Directive 96/97/EC--To our knowledge, Spanish law does not explicitly refer to the implementation of the principle of equal treatment for men and women in occupational social security schemes included in the 96/97/EC Directive amending Directive 86/378/EEC. Therefore, the equality of women and men before the law and the principle of gender equality in the labor market anchored in the Constitution apply to occupational social security matters.²¹

¹⁵ Article 26 of Act 31/1995 of 8 November, on prevention of risks at work.

¹⁶ Article 7.3 of Act 39/1999 of 5 November, to promote the combination of workers' family and professional responsibilities.

¹⁷ Decree 2,310/1970 of 20 August, on women's labor rights, established for women a right to unpaid parental leave of at least one year and up to three years.

¹⁸ For instance, in Article 25.4 of Act 16/1976 of 8 April, on labor relations.

¹⁹ Article 46.3 of Act 8/1980 of 10 March, the Workers' Statute.

²⁰ Article 1 of Act 39/1999 of 5 November, to promote the combination of workers' family and professional responsibilities.

²¹ Articles 14 and 35.1.

Burden of the Proof Directive 97/80/EC--The transposition of the burden of the proof Directive to Spain has been moderately positive. The inversion of the burden of the proof in cases of gender discrimination was established in Spain in 1989-1990.²² However, the Directive 97/80/EC refers to direct as well as indirect discrimination, whereas, as previously mentioned, the concept of indirect discrimination is not explicitly included in Spanish legislation.

Equal Treatment Directives 2000/78/CE and 2002/73/CE--The prohibition of sexual harassment contained in the Equal Treatment Directives 2000/78/CE and 2002/73/CE was included in the Spanish legislation earlier than in the EU Directives. An explicit prohibition of sexual harassment perpetrated by bosses was included in the labor law in 1989²³ and the Penal Code in 1995.²⁴ The prohibition of sexual harassment perpetrated by co-workers was included in the 1999 reform of the Penal Code.²⁵

Enforcement of the legislation in Spain.

As a general rule, the Spanish Constitution and the labor law comply with the requirements of Community norms, according to Pérez del Río (1997). The Constitutional Tribunal use to interpret the Constitution in equal treatment adapted to Directive 76/207 by the Tribunal of Justice of the European Community. The problem is that the case has to pass through

²² Basis 19 of Act 7/1989 of 12 April, of bases of labor procedures; and article 96 of Royal Decree Law 521/1990 of 27 April, Law on labor procedures.

²³ Act 3/1989 of 3 March, on the extension of maternity leave to 16 weeks and other gender equality measures in employment, reformed the Workers' Statute, whose Article 4.2.e affirms since then that "in their work, workers have the right...to respect for their intimacy and dignity, which includes the protection against verbal or physical attacks of a sexual nature." Article 63 of the Civil Service Act of 7 February 1946 was similarly modified. According to Act of infractions and sanctions in the social order (Act 8/1988 of 7 April) employers' acts against the intimacy and dignity of workers (sexual harassment included) is considered a very grave infraction in labor matters, to be penalized with a fine of 500,000 to 15,000,000 pesetas.

²⁴ Article 184 of the 1995 Penal Code (Organic Act 10/1995 of 23 November) stated that sexual harassment occurs when a person "demands favors of sexual nature: for his/her benefit or for the benefit of someone else; taking advantage of a situation of superiority of professional, educational or similar nature; announcing to the other person explicitly or tacitly a harm to his/her expectations in his/her professional, educational, or similar situation." Sexual harassment was punished with prison of twelve to twenty-four week-ends, or with a fine of 36,000 to 18,000,000 pesetas.

²⁵ Organic Act 11/1999 of 30 April reformed the 1995 Penal Code. Unwanted sexual harassment perpetrated by co-workers and subordinates was explicitly prohibited by article 184 of the aforementioned code. This type of harassment happens when in a context of a professional or educational relationship, someone "demands favors of sexual nature: for his/her benefit or for the benefit of someone else; and provokes to the victim an objective and gravely intimidating, hostile or humiliating situation". This indirect harassment caused by a hostile environment is punished with prison of six to twelve week-ends, or with a fine of 18,000 to 9,000,000 pesetas. Punishments to sexual harassment were increased when "the victim is especially vulnerable because of his/her age, illness, or any other circumstance". In this case, sexual blackmail perpetrated by superiors is punished with prison of six months to a year, and indirect harassment caused by a hostile environment with prison of twelve to twenty-four week-ends, or with a fine of 36,000 to 18,000,000 pesetas.

ordinary tribunals (Juzgados de lo social, Tribunales Superiores de Justicia, Tribunal Supremo), before the case arrives to the Constitutional Tribunal. It is at the lower level court of justice where the interpretation of norms is far away from the European directives. This implies a loss of time and economic resources, as it takes an average of three years, for the Constitutional Tribunal to solve the case²⁶.

Individual litigation is very rare in Spain, particularly by women (Fernández López, 1997: 175-176). Lack of consciousness and fear of losing the job in a very unstable labor market are the main reasons. There are no specific bodies in the legal framework responsible for taking action in case of unequal treatment. However, the Law of labor Procedure (article 20 of Ley de procedimiento Laboral 1990) provides trade unions with the opportunity to take action in discrimination cases, in any case under demand of the judge (articles 95 and 96) (Blat Gimeno, 1997: 129).

2. Factors that Facilitated Gender Equality Law Reform in Spain

This section shows that the reform of labor law in accordance with the principle of gender equality has taken place in a context relatively favorable to this policy change. Gender equality labor reform has been facilitated by mass public attitudes that are relatively well-disposed to the EU, and by the support by all political parties to the Spanish accession to the EU and the principle of equality of women and men before the labor law. Other aspects of the political system have also made labor law reform easier, including: the concentration of powers to establish labor law in the hands of the central state; the preponderance in the Executive of the central state policy system; absolute majorities in the central-state parliament between 1982 and 1996 and since 2000; and increasing numbers of women in political decision making positions.

Mass public attitudes towards the EU--Broadly speaking, mass public attitudes in Spain have supported the EU to a higher extent than in other EU Member States, as has been repetitively noted by research (for instance: Closa, 1995:311; Díez-Medrano, 1995; Threlfall, 1997:2). Using Eurobarometer data between 1981 and 1997, Barreiro and Sánchez-Cuenca (2001) have shown that since Spain's accession (1986), the proportion of Spaniards in favor of European integration has been significantly higher than the proportion against. Spaniards have backed the transfer of powers in economic, political and social matters from domestic to European institutions to a more pronounced degree than EU citizens in general. Spaniards' support of the EU is not the direct result of their perceived benefit of EU membership for Spain. Quite to the contrary, the proportion of Spanish citizens who think that their country does not benefit from EU membership surpasses the EU average. A significant percentage of Spaniards believed that Spain does not benefit from European membership, but still backed the process of European integration.

However, inconsistencies in Spanish pro-European feelings also exist (Barreiro and Sánchez-

²⁶ The Constitutional Tribunal has had also interesting interventions as to paternalistic norms protecting women. The sentence of the Constitution Tribunal concern nurses and auxiliary female personnel being paid as overtime all Sunday working hours, while men are only paid three hours. The Constitutional tribunal his sentence of 21 december 1982 decided to extend the better situation enjoyed by women to men.. The main reason, according to this tribunal is that in the absence of a plausible reason it is not advisable to restrict social conquests of any group (women in that case) that men did not enjoy for the sake of equal treatment (Alcolea Tejedor, 1994: 59-61).

Cuenca, 2001). The majority of the population does not accept some consequences of EU membership, such as the free circulation of goods and workers, which is a crucial dimension of the common market. In addition, Spaniards' attitudes towards the EU to some extent depend on domestic rather than EU factors. For instance, when unemployment is higher in Spain, Spaniards declare less backing to Spain's membership, the integration process and the benefits to Spain of EU membership. Nevertheless, in spite of these inconsistencies, Spanish public opinion has been on the whole supportive to the EU.

Political parties in favor to the Spanish accession to the EU--Political parties have also been favorable towards Europe. In the 1970s and 1980s, all parties backed the integration of Spain into the EU (Álvarez-Miranda, 1996). European policy has enjoyed a high degree of inter-party consensus. This consensus has been mitigated in the 1990s, when the United Left (the *Izquierda Unida*, IU)²⁷ argued against what it considered neoliberal EU policies and the adjustments required to monetary convergence. However, parties are not seriously divided internally on the issue of Europe (Closa, 1995: 311-312).

Political parties in favor of the principle of equality of women and men before the labor law--Although with different emphasis, the compromise of adapting Spanish legislation to the principle of equality between the sexes was included in electoral programs, party congress resolutions and other documents of the main political parties since the transition to democracy. Since then, equality before the law has been identified as a leading principle of modern, Western, civilized and democratic politics that Spain wanted to resemble.

Labor law in the hands of the central state--Spain is now a very decentralized political system. However, Article 149.1 of the Constitution affirms that the central state has exclusive powers on the establishment of labor law in spite of the fact that regions implement part of labor legislation. Therefore, the central state has the political initiative in this policy area. If central state policy makers have the willingness to reform labor law, they can do it themselves and do not necessarily have to share decision making with the regions.

A strong Executive--The Spanish political system (at the central state level) is a system of checks and balances only to a limited extent. The Constitution sets up a political system which includes a strong Executive and a weak Parliament. The President of the Government (the head of the Executive) is the most important figure in the political system because s/he is completely free to form the Cabinet, s/he can be removed from office only in very special circumstances, and s/he is given clear executive functions. Labor law can be partly modified if this (powerful) Executive issues decrees (which do not require parliamentary processing).²⁸

²⁷ The IU is a nationally-based coalition of parties to the left of the social democratic party (*Partido Socialista Obrero Español*, PSOE). The IU was formed in 1986, and includes the Communist Party (the *Partido Comunista de España*, PCE).

²⁸ The Spanish parliament is a bi-cameral assembly. The Congress of Deputies (the lower chamber) is elected through proportional representation. The Senate (the upper chamber) is elected by a majority system. In practice, although not in theory, the Congress of Deputies is more important than the Senate.

Absolute majorities in Parliament--Labor law can also be reformed by Acts, which require parliamentary processing. In Parliament, absolute majorities have neither been unknown nor rare: the social democratic *Partido Socialista Obrero Español* (PSOE) had the absolute majority in Parliament between 1982 and 1993, and this is also the case of the conservative *Partido Popular* (PP) since the Spring 2000 election.²⁹ The Cabinet, the Congress of Deputies, the Senate and regional parliaments have the power to initiate legislation.³⁰ Nevertheless, in post-authoritarian Spain the majority of laws have been initiated by the Executive (Heywood, 1995: 99-101; Newton and Donaghy, 1997: 45-72).

Increasing number of women in the political elite--The increasing presence of women in the political elite has been another factor that has facilitated the inclusion of the principle of gender equality in domestic legislation. Due in part to successful feminist mobilization within parties, the proportion of women in policy making positions has increased in the democratic period (although at times with interruptions). In the lower chamber of the central-state parliament, the proportion of women is now 28 percent. In this regard, Spain is in an intermediate position among EU member states (the seventh position). In the lower chamber the highest proportion of women are found in the social democratic PSOE (37 percent), followed by the leftist coalition IU and the conservative PP (25 percent in both cases) (Instituto de la Mujer, 2000; Interparliamentary Union, 2000).

3. The Impact of Spanish Gender Equality Legislation at the Level of Society

Due to lack of research on the evaluation of the impact of Spanish gender equality legislation at the level of society, we can only hypothesize about some dimensions of such an impact. What we cannot do is to differentiate such an impact from the effects of other factors. For instance, we argue that when women and men become equal before the law, women have more incentives to participate in the labor market, and possibly the size of the female labor force increases. However, this increase may not be caused directly by previous legal reforms but by other factors, such as labor shortages that lead employers to hire women.

It is reasonable to argue that the reform of the Spanish law in accordance with the principle of gender equality have had the following impacts:

(i) *Increase in size of female labor force.*

The female activity and employment rates have been constantly increasing since the transition to democracy. In 1980 these rates were 27.1% and 23.8 %, while in 2001 these rates reached the level of 40 % and 32.4 % respectively (Instituto de la Mujer 2003b). Moreover, in the most recent period 1996-2000, the female employment rate increased by 21% in comparison to 9% increase for the male employment rate (Instituto de la Mujer 2001). Also, the gender employment rate gap for the 40-49 age group has diminished in this same period from 43 to 38 percentage points.

²⁹ At other times, Spain has been governed by minority governments.

³⁰ Article 87.3 of the Constitution establishes that legislation can also be initiated by popular referenda (500,000 signatures are required). This legislation cannot deal with taxes, international affairs, the prerogative of pardon and other matters related to fundamental rights and public liberties, and electoral arrangements (among other issues).

- (ii) *Women's access to jobs that were prohibited to them in the past, for instance, the police³¹ or the army.³²*

In the period 1996 to 2000 the number of women in the army increased from 300 to 5,200. That means that the female share in this period changed from an insignificant 0.49% to 6.38% (Instituto de la Mujer 2001).

- (iii) *Increase in size of skilled/educated female workforce.*

When women and men become equal before the law, women have more incentives to acquire education in order to have access to better jobs. Since 1975, women's level of education has constantly increased. In the third quarter of 2002, the proportion of women with short undergraduate university degrees (estudios universitarios de primer ciclo) (6.9%) exceeded the equivalent proportion of men (5.58), while the proportion of women and men with long undergraduate university degrees was not that different (6.2% and 7.1% respectively) (Instituto de la Mujer 2003b). If we look at the distribution of employed women by education in comparison to men, we find that a considerably higher percentage of employed women have higher education than men (35.3% versus 25.4% in the first quarter 2001, according to the Spanish Labour Force Survey).

- (iv) *Reduction of the risk of women's social exclusion.*

Economic autonomy very often means participation in the labor market, because the majority of the population of active age acquires economic autonomy through paid work. A labor law that treats women and men equally permits women to gain economic resources in the market and reduces the risk of social exclusion for women. In fact, the percentage of lone mothers that are on employment has increased from 53% in 1996 to 65% in 2000. However, other factors have been increasing this risk, including increasing rates of separation and divorce that increased 15% in the same period 1996-2000. (Instituto de la Mujer 2001). The poverty rate for lone mothers was 24 in 1990, with an increase in poverty odds if the mother does not work of 3.3 (Esping Andersen et al., 2002: 37).

- (v) *Increase in female share in higher level jobs.*

According to the Spanish Labor Force Survey, in the second quarter of 2002, the proportion of women in decision making positions in private enterprises and the state (dirección de las empresas y de la Administración Pública) was 30.5 percent (Instituto de la Mujer 2003b). In the period 1996-2000 the number of women in this occupation increased by 10% (Instituto de la Mujer 2001). This rate of variation for women did not differ from the male rate. Consequently, the percentage of women in higher level jobs is stacked at around 30%³³.

³¹ Decree 1468/1977 of 17 June allowed women to take the exams for the General Police School (*Escuela General de Policía*).

³² Royal Decree Law 1/1988 of 22 February allowed women to work in some sections of the army. Article 3.3 of Royal Decree 562/1990 of 4 May, on the regulation of access to the army, stated that no distinction between women and men would be made in the selection process to the army, except the differences required by the different physical conditions of the sexes.

³³ If we consider higher level jobs defined as ISCO 1-3, the female share has increased from 36.3% to 42.4%, according

- (vi) *Increase in the proportion of women who continue to work for wages after marriage and the delivery of children.*

The protection against dismissal during pregnancy and other factors have helped women to stay in the labor market after marriage and childbirth. The proportion of women in employment in households with children up to 6 years old has increased from 32.8% in 1993 to 45.3% in 2000 (Fagan et al. 2001: Table IV.2.2, page 105))

- (vii) *Mixed effects on fertility rates.*

The fertility rate has continuously decreased to reach the level of 1.2, which is the lowest level in the world (Instituto de la Mujer 2003b). This low fertility level shows that while women are treated in the labor market in a more egalitarian way than in the past, the combination of work and family is still a problem of pending solution.

4. The Impact of Spanish Gender Equality Legislation at the Level of Employers

- (i) *Mixed effects on wage costs.*

On the one hand, law now requires employers to pay women and men equally. If the law is obeyed, wage costs increase, since employers no longer pay women less than men. However, according to García Díaz et al (2002), around 50% of the gender wage gap is due to overt discrimination, that is different pay for work of equal value. On the other hand, in some sectors of the economy, employers can always avoid hiring women and substitute female citizens by other types of workers that they can in practice discriminate such as illegal immigrants.

- (ii) *Decrease in employers' costs related to maternity leave.*

Maternity leave is now paid by the state. This reduces employers' costs related to maternity leave. Only recently important steps have taken in order to diminish/eliminate the employers cost of maternity of their female employees. In addition to Act 39/1999 by which the Social security assumes the payment of 16 weeks maternity leave and the part of the social security contribution paid by the employee during this period, Act 12/2001 established a 100% bonus to the part paid by the employer when an unemployed person is contracted to substitute the employee on maternity leave.

5. The Impact of Spanish Gender Equality Legislation at the level of Individuals and Households

- (i) *More equal division of labor within some households.*

If women are treated in the labor market more equally than in the past, they have more personal resources with which to negotiate a more equal division of labor at home. Numerous studies show that since 1975 the participation of men in domestic and caring tasks has (moderately) increased in a significant proportion of households. However, attitudes towards the sharing of household tasks are more egalitarian than actual practices (Alberdi 1995; Alberdi, Flaquer and Iglesias de Ussel 1994; Álvaro Page 1996; Alvira Martín et al. 1994; Carrasco 1991; De Pablo Masa 1976; Durán 1987; Finkel

Morgenstern 1997; INNER 1988; Izquierdo, Del Río, and Rodríguez 1988; Meil Landwerlin 1999; Pérez-Díaz, Chuliá and Valiente 2000; Ramos 1990; Valiente 1996).

(ii) *Equality of rights between biological parents and parents through adoption.*

Successive legal reforms have given people who adopt children the same rights of biological parents to maternity leave, parental leave and any other measures to help parents combine work and family responsibilities. In this way, important obstacles against adoption have been eliminated.

(iii) *Very modest effects on men's non-traditional roles.*

The proportion of fathers who take maternity leave in place of mothers is still very small. The Spanish Labor Force Survey provides data segregated by sex of wage earners who are not working because of maternity leave during the week when the survey questionnaire is administered. In the third quarter of 2002, 2 percent of these earners were men (Instituto de la Mujer 2003b).

(iv) *Equality of access to employment may have promoted more equal participation in civil society, including unions.*

The proportion of women as member unions has increased to reach the level of 30.5 percent in 2001 for the General Workers' Union (*Unión General de Trabajadores*, UGT) and 33.5 percent in 2002 for the Workers' Commissions (*Comisiones Obreras*, CCOO) (Instituto de la Mujer 2003b).

Appendix Tables

Table 1. EU-Norms (1975-1997) and Spanish Institutional Form of Adjusting to the EC-Norms

EC-DIRECTIVES	SPANISH PROVISIONS	SPANISH INSTITUTIONAL FORM OF ADJUSTING TO THE EC-NORMS
Equal Pay 75/117/EEC	Act 16/1976 of 8 April (Article 10.2)	Act
	1978 Constitution (Article 35.1)	Constitution
	Act 8/1980 of 10 March (Article 28)	Act
	Act 11/1994 of 19 May (Article 3)	Act
Equal Treatment 76/207/EEC	Act 16/1976 of 8 April (Article 10.1)	Act
	1978 Constitution (Articles 23.2 and 35.1)	Constitution
	Act 8/1980 of 8 April (Articles 4.2.c, 17.1, and 24.2)	Act
	Act 51/1980 of 8 October (Article 38.2)	Act
Social Security 79/7/EEC	Decree 2065/1974 of 30 May (Article 7) (F)	Decree
	1978 Constitution (Art.41)	Constitution
	Act 26/1990 of 20 December (Article 4 and derogatory disposition)	Act
Occupational Social Security 86/378/EEC	1978 Constitution (Articles 14 and 35.1)	Constitution
Self-Employment 86/613/EEC	Decree 2530/1970 of 20 August (Article 3)	Decree

Safety and Health at Work 92/85/EEC	Act 16/1976 of 8 April (Article 25.4)	Act
	1978 Constitution (Article 40.2)	Constitution
	Act 3/1989 of 3 March (Article 1.4)	Act
	Act 42/1994 of 30 December (Article 33)	Act
	Act 31/1995 of 8 November (Article 26)	Act
	Act 39/1999 of 5 November (Article 7)	Act
Parental Leave 96/34/EC	Decree 2310/1970 of 20 August	Decree (F)
	Act 16/1976 of 8 April (Article 25.4)	Act
	Act 8/1980 of 10 March (Article 46.3)	Act
	Act 39/1999 of 5 November (Article 1)	Act
Second Occupational Social Security 96/97/EC	1978 Constitution	Constitution
Burden of Proof 97/80/EC	Act 7/1989 of 12 April (Basis 19.4)	Act
	Royal-Decree Law 521/1990 of 27 April (Article 96)	Royal-Decree Law

(F) Legislation approved during the Francoist period

**Table 2. EU-Norms (1975-1997) and Timing of Spanish Provisions
(+/- Years, Compared to the EC-Norm)**

EC-DIRECTIVES	SPANISH PROVISIONS	TIMING OF SPANISH PROVISION +/- YEARS (COMPARED TO THE EC-NORM)
Equal Pay 75/117/EEC	Act 16/1976 of 8 April (Article 10.2)	+1
	1978 Constitution (Article 35.1)	+3
	Act 8/1980 of 10 March (Article 28)	+5
	Act 11/1994 of 19 May (Article 3)	+9
Equal Treatment 76/207/EEC	Act 16/1976 of 8 April (Article 10.1)	0
	1978 Constitution (Articles 23.2 and 35.1)	+2
	Act 8/1980 of 8 April (Articles 4.2.c, 17.1, and 24.2)	+4
	Act 51/1980 of 8 October (Article 38.2)	+4
Social Security 79/7/EEC	Decree 2065/1974 of 30 May (Article 7) (F)	-5
	1978 Constitution (Art.41)	-1
	Act 26/1990 of 20 December (Article 4 and derogatory disposition)	+11
Occupational Social Security 86/378/EEC	1978 Constitution (Articles 14 and 35.1)	-8
Self-Employment 86/613/EEC	Decree 2530/1970 of 20 August (Article 3)	-16

Safety and Health at Work 92/85/EEC	Act 16/1976 of 8 April (Article 25.4)	-16
	1978 Constitution (Article 40.2)	-14
	Act 3/1989 of 3 March (Article 1.4)	-3
	Act 42/1994 of 30 December (Article 33)	+2
	Act 31/1995 of 8 November (Article 26)	+3
	Act 39/1999 of 5 November (Article 7)	+7
Parental Leave 96/34/EC	Decree 2310/1970 of 20 August	-26
	Act 16/1976 of 8 April (Article 25.4)	-20
	Act 8/1980 of 10 March (Article 46.3)	-16
	Act 39/1999 of 5 November (Article 1)	+3
Second Occupational Social Security 96/97/EC	1978 Constitution	-18
Burden of Proof 97/80/EC	Act 7/1989 of 12 April (Basis 19.4)	-8
	Royal-Decree Law 521/1990 of 27 April (Article 96)	-7

(F) Legislation approved during the Francoist period

Table 3. EU-Norms (1975-1997) and Quality of Spanish Provisions (Below/At the Same Level As/Above the Minimum EC Standard)

EC-DIRECTIVES	SPANISH PROVISIONS	QUALITY OF SPANISH PROVISION: BELOW/AT THE SAME LEVEL AS/ABOVE THE MINIMUM EC STANDARD
Equal Pay 75/117/EEC	Act 16/1976 of 8 April (Article 10.2)	below
	1978 Constitution (Article 35.1)	(*)
	Act 8/1980 of 10 March (Article 28)	below
	Act 11/1994 of 19 May (Article 3)	at the same level as
Equal Treatment 76/207/EEC	Act 16/1976 of 8 April (Article 10.1)	below
	1978 Constitution (Articles 23.2 and 35.1)	(*)
	Act 8/1980 of 8 April (Articles 4.2.c, 17.1, and 24.2)	below
	Act 51/1980 of 8 October (Article 38.2)	below
Social Security 79/7/EEC	Decree 2065/1974 of 30 May (Article 7) (F)	at the same level as
	1978 Constitution (Art.41)	(*)
	Act 26/1990 of 20 December (Article 4 and derogatory disposition)	at the same level as
Occupational Social Security 86/378/EEC	1978 Constitution (Articles 14 and 35.1)	(*)
Self-Employment 86/613/EEC	Decree 2530/1970 of 20 August (Article 3)	at the same level as

Safety and Health at Work 92/85/EEC	Act 16/1976 of 8 April (Article 25.4)	above
	1978 Constitution (Article 40.2)	(*)
	Act 3/1989 of 3 March (Article 1.4)	above
	Act 42/1994 of 30 December (Article 33)	above
	Act 31/1995 of 8 November (Article 26)	at the same level as
	Act 39/1999 of 5 November (Article 7)	at the same level as
Parental Leave 96/34/EC	Decree 2310/1970 of 20 August	above
	Act 16/1976 of 8 April (Article 25.4)	above
	Act 8/1980 of 10 March (Article 46.3)	above
	Act 39/1999 of 5 November (Article 1)	above
Second Occupational Social Security 96/97/EC	1978 Constitution	(*)
Burden of Proof 97/80/EC	Act 7/1989 of 12 April (Basis 19.4)	at the same level as
	Royal-Decree Law 521/1990 of 27 April (Article 96)	at the same level as

(*) It is very difficult and often meaningless to compare the quality of constitutional provisions and EU directives, since the former contain very general principles (for instance, that women cannot be discriminated against in the labor market), while the latter include more concrete legislation (for example, a definition of gender discrimination in labor matters). Therefore, I do not assess the quality of constitutional provisions in comparison with EU standards.

(F) Legislation approved during the Francoist period

Table 4. EU-Norms (1975-1997) and number of changes in Spanish Legislation in response to EU-Norms (1975-1997)

EC-DIRECTIVES	SPANISH PROVISIONS	NUMBER OF CHANGES IN SPANISH LEGISLATION
Equal Pay 75/117/EEC	Act 16/1976 of 8 April (Article 10.2)	3
	1978 Constitution (Article 35.1)	
	Act 8/1980 of 10 March (Article 28)	
	Act 11/1994 of 19 May (Article 3)	
Equal Treatment 76/207/EEC	Act 16/1976 of 8 April (Article 10.1)	3
	1978 Constitution (Articles 23.2 and 35.1)	
	Act 8/1980 of 8 April (Articles 4.2.c, 17.1, and 24.2)	
	Act 51/1980 of 8 October (Article 38.2)	
Social Security 79/7/EEC	Decree 2065/1974 of 30 May (Article 7) (F)	1
	1978 Constitution (Art.41)	
	Act 26/1990 of 20 December (Article 4 and derogatory disposition)	
Occupational Social Security 86/378/EEC	1978 Constitution (Articles 14 and 35.1)	(**)
Self-Employment 86/613/EEC	Decree 2530/1970 of 20 August (Article 3)	(**)

Safety and Health at Work 92/85/EEC	Act 16/1976 of 8 April (Article 25.4)	2
	1978 Constitution (Article 40.2)	
	Act 3/1989 of 3 March (Article 1.4)	
	Act 42/1994 of 30 December (Article 33)	
	Act 31/1995 of 8 November (Article 26)	
	Act 39/1999 of 5 November (Article 7)	
Parental Leave 96/34/EC	Decree 2310/1970 of 20 August	0
	Act 16/1976 of 8 April (Article 25.4)	
	Act 8/1980 of 10 March (Article 46.3)	
	Act 39/1999 of 5 November (Article 1)	
Second Occupational Social Security 96/97/EC	1978 Constitution	(**)
Burden of Proof 97/80/EC	Act 7/1989 of 12 April (Basis 19.4)	(**)
	Royal-Decree Law 521/1990 of 27 April (Article 96)	

(**) Previous to EU legislation

PART II

AN ASSESSMENT OF THE PROGRESS TOWARDS ACHIEVING THE OBJECTIVES OF EQUALITY.

Introduction

This second part identifies both the limits of the impact of Spanish legislation on gender equality in employment and the progress made through positive action and good practices. We identify first three factors that make difficult the implementation of the reform of Spanish legislation in line with the principle of gender equality mandated by the EU. We then study the limits of the impact Spanish gender-equality legislation at the level of society (Section 1), employers (Section 2) and individuals and households (Section 3). Finally, Section 4 shows examples of positive action and good practices.

Three general factors limit the impact of Spanish gender equality legislation regarding employment. First, the Spanish labor market is characterized by low levels of activity and employment, and high levels of temporary employment and unemployment.³⁴ These characteristics of the labor market imply that if employers break the law and discriminate against women, many people are fear that they will loose their jobs or will not find any job if they denounce employers' illegal behavior.

Second, generally speaking, gender-equality legislation is more easy to implement in big companies, since unions' presence there is intense. Subsequently, gender-equality legislation is more easily broken in small companies. The majority of Spanish firms are small companies.

Lastly, the characteristics of Spanish legal culture discourage victims of discrimination in employment to go to court to seek redress. Surveys suggest that, generally speaking, Spanish citizens are in favor of negotiation and compromise, and opposed to litigation. Many Spaniards believe that it is better to reach a bad compromise between two contending parties than a good result after litigation. The majority of the population has never had any contact with the legal system, and believes that the courts function badly (Toharia, 1994).

1. Limits of the Impact of Spanish Gender Equality Legislation at the Level of Society

(i) Weak presence of women in the labor market in Spain in EU perspective.

In spite of the increase in the size of the female labor force in past decades, the female activity and employment rates in Spain are comparatively low (see above). According to García Díaz et al.

³⁴ In the fourth quarter of 2002, the Spanish activity rate was 54%. Gender difference in activity are very intense, since the male activity rate was 67% while the female activity rate was 42%. The Spanish employment rate was 48%, and again there are marked differences by sex, since the male employment rate (61%) was much higher than female employment rate (35%). Approximately a third (31%) of all work contracts were temporary contracts in Spain. This Spanish rate was the highest in the EU. Gender differences regarding temporary employment were not so high, since 29% of male employment and 34% of female employment was temporary. The Spanish unemployment rate was very high (11%). The Spanish female unemployment rate (16%) was two times the male unemployment rate (8%) (data from the Spanish Labor Survey - *Encuesta de Población Activa* available at www.ine.es).

(2002), employment differences between Spain and the EU have a strong gender component. The female unemployment rate gap is 10.3 percentage points in comparison to only 2.6 percentage points for the male gap. This implies that in order to converge to the EU average unemployment rate, there would be needed 692,000 jobs for women and 255,000 for men. Similarly, the female activity rate gap is 8.7 percentage points, and no gap in the case of men; consequently in order to attain the 60.1% EU average, 1,150,000 jobs for women should be generated by the Spanish economy. Moreover, the difference in the gender gap in activity rates between Spain and the EU average gets wider with age particularly in middle ages 35-59. The opposite occurs in the case of the gender unemployment gap, given the higher unemployment rates of young women in Spain. This occurs despite the higher educational level of unemployed women (approximately 18% of unemployed women have a university degree in comparison to 12% of unemployed men).

As to inactivity of Spanish women, there were a total of 10,237,000 women out of the labor force in the 1st quarter of 2002 (EPA, INE), 29% of them were younger than 40. Approximately half of them were students, but a significant 44% were housewives. Inactivity is a female phenomenon par excellence, as three out of every 5 inactives are women.

(ii) Skilled female workforce and segregation.

In spite of the increase in the size of skilled/educated female workforce, the persistence of gender inequalities in education are latter translated into job inequalities and segregation. Education is one of the gender areas where the most research from a gender perspective has been undertaken in Spain. As in other countries, historically, girls were enrolled in the education system in considerably lower proportions than boys. Girls and boys usually attended sex-segregated schools and were taught a different curriculum. In contrast to the boys' curriculum, the girls' curriculum included a strong component of domestic skills (mainly sewing) and religious (Catholic) activities (chiefly prayers). Girls' curriculum contained fewer academic subjects than did boys' curriculum. The quality of training for teachers who worked in girls' schools was lower than that of teachers in boys' schools. Since the nineteenth century, and especially during the democratic regime of the Second Republic (1931-1936), some experiments with mixed schools took place. However, mixed schooling was forbidden by Francoist authorities in 1939, and sex-segregated schools became again the norm. It was only in 1970 that mixed schools were permitted again and in the mid-1980s that these became the established pattern. Today, only a tiny minority of schools are sex-segregated in Spain (Ballarín Domingo 1994; Capel Martínez 1986; Cortada Andreu 1988).

Because sex-segregated schools have been associated with the Franco's dictatorship (1936-1975) and backwardness, the overwhelming majority of social scientists, policy makers and social actors have favored mixed schools. Therefore, in contrast with Anglo-Saxon countries, in democratic Spain no debate has emerged on the potential usefulness of sex-segregated schools for girls. While supporting mixed schools, social scientists have studied practices in these schools that hinder girls and women (Arenas Fernández 1996; Campo Bolado et al. 1996; Izarra and López Carretero 1999). Researchers have identified at least seven areas where sexist practices exist: textbooks, curriculum, teachers' actions in the classroom, interaction among students, students' academic options, the feminization of the teaching profession and pupils' positions in the labor market after they complete their studies.

First, textbooks provide gender-biased views of social reality. For instance, women are mentioned and represented in textbooks much less frequently than men. Textbooks tend to ignore

women's experiences and privilege men's activities (Blanco García 2000; García, Troiano, and Zaldívar 1993; Garreta and Careaga 1987; Moreno 1992). Second, since the 1970s the extension of mixed schooling took place by using the former boys' curriculum to teach pupils of both sexes rather than by integrating the former boys' and girls' curricula. As a result, women's traditional skills were given less importance (or no importance at all) than men's ones (Alberdi and Alberdi 1984; Fernández Enguita 1991). Third, teachers (often unconsciously) interact more often with male than with female pupils, hold hostile opinions against girls, have different (and higher) expectations for the professional careers of boys than of girls, and use masculine language forms (for example "boys" or "men") when referring to female and male pupils or, even worse, when referring only to female students (Arenas Fernández 1996; Calero Fernández 1999; Subirats and Brullet 1988). Fourth, students' own behavior contributes to gender differentiation in school. For example, male students (specially older ones) tend to use more space in the schoolyard because they play space-consuming sports such as soccer and basketball, while girls are relegated to the sides and corners of the playground (Bonal 1998). Fifth, students tend to choose different courses depending on their sex, following the common pattern existing in other countries. In spite of the fact that on average girls' academic performance in primary and secondary education is as good as (or even slightly better than) that of boys, girls tend to be overcrowded in studies of humanities and social sciences, while boys are in technical and scientific studies (De Borja 1970). Sixth, the teaching profession was male up until the nineteenth century when it started to become a female profession through a process of losing prestige and pay (San Román 1998). Finally, the same level of education improves women's opportunities in the labor market less than it improves men's opportunities (Casal, Masjuan, and Planas 1989).

Gender differences are present not only in the general system of education but also in the job training system. The content of the training that unemployed and employed women and men receive is different. The majority of pupils of some courses (such as hairdressing) are women while the opposite is true for other courses (such as plumbing). Moreover, the majority of pupils of the schemes that combine training and internships (*prácticas*) in enterprises are men, while unemployed and employed men are under-represented in schemes consisting only on training. The former type of schemes are more useful than the latter type to insert people in employment.

(iii) *Risk of women's social exclusion.*

The increase of female activity and employment in the last decades has meant a reduction of the risk of women's social exclusion. In spite of the increase in the proportion of women who continue to work after marriage and childbirth, comparatively speaking there are still higher proportions of women who stop working after having children. Being out of employment for a long period is a risky option in a labor market like the Spanish one with high levels of unemployment.

The risks of some groups of women to become socially excluded still persist, especially in the case of women of active age who are low-skilled and raise children alone. These women are over-represented among the recipients of social salaries (*salarios sociales*), which are the social assistance programs managed by regions.

(iv) *Women in the public sector.*

In spite of the increase in female share in higher-level jobs, women still find more obstacles than men to reach decision making positions (more in the private sector than in the public sector). In Spain, there are very illuminating qualitative studies on the movement of women through the hierarchies of

public administration. The recruitment and promotion processes in the civil service are supposed to be entirely meritocratic, except for the highest ranks, which are occupied by people directly nominated by political authorities. In spite of this meritocratic principle, some highly-ranked female civil servants reported having been discriminated against in a public exam (*oposición*) in favor of male candidates. The examining board (*tribunal de oposición*) assumed that male candidates "needed" the highly-ranked position more than the female candidates, because proportionally more men than women are breadwinners. It was also presumed that men naturally had professional ambitions that women lack. Therefore, female candidates "could wait" for another opportunity (García de León 1991:34). The low presence of women on examining boards seems to be an obstacle for the recruitment of women to senior grades in the civil service (Instituto de la Mujer 1993b: 32-33).

An interesting study on career patterns of female and male highly-ranked civil servants has been made (Instituto de la Mujer 1993a). This study was based on a self-administered questionnaire distributed in 1992 to a representative sample of women and men belonging to the highest group of the central state civil service (group A). One of the purposes of this study was to analyze the perceptions of group A officials (of both sexes) of the barriers against the professional advancement of female highly-ranked bureaucrats. Many of those interviewed: perceived that public administration is a milieu more "friendly" to men than to women; and identified sexist stereotypes, discrimination, and family responsibilities as obstacles to the professional advancement of women. 64% of the women and 27% of the men interviewed affirmed that it was necessary to elaborate equality measures to promote women to highly-ranked positions in the civil service (Instituto de la Mujer 1993a: 69). In our view, the study commented on here is very important because it identifies the problems for the promotion of women that exist in the most qualified sector of the female working population (group A officials have four or more years of university education), and in public service, which is supposed to be one of the professional environment most friendly towards women.

Studies on the gender bias in the culture of public administration have also been carried out at the regional level. Gutiérrez and Pastor (1996) have studied the public administration in Catalonia. They interviewed some women who occupied highly-ranked positions (*jefaturas de servicio* and *subdirecciones*). The interviewed described the institutions where they work. They did not report any explicit discrimination (written in the law) in the methods of recruitment and promotion. No affirmative action has ever been taken in order to promote women to top positions.

Nevertheless, the officials interviewed identified several features of the culture of the organization that inhibit the promotion of women. It was assumed that highly-ranked officials had to work very long hours, and far beyond the official schedule. This assumption might be interpreted as a type of indirect discrimination, since the majority of men can fulfil these requirements better than the majority of women (because of the double shift). These requirements are not absolutely necessary for the good performance of the job (although these may be necessary given the current organization of the administration).

Most of the women interviewed accepted the aforementioned requirements with the argument that if women want to be part of the professional world earlier monopolized by men; they have to behave like men. Nevertheless, most of these women could not avoid feeling guilty for not dedicating enough time to their families. Most men do not seem to suffer from these feelings of guilt. Because these women made such a big effort to comply with masculine professional standards, they were very critical especially of women who questioned these standards but also of those who gave up professional ambition in order to have a more rewarding personal life.

Some male officials were aware of the difficulties that their wives encountered when they tried to combine professional and family responsibilities, and thought that their female colleagues were not going to be able to overcome these obstacles. This finding is very interesting (and perhaps also discouraging), because it means that men who are more aware of the barriers against women might develop fatalistic ideas about the capacity of women to get over these impediments. In other words, paradoxically as it might be the most gender-consciousness men might not always be the best male allies of women in their way up the professional ladder. Finally, most women interviewed would not accept the establishment of quotas or of any other internal policy to promote more women to top positions. This finding is the opposite to that of the study mentioned above.

Legislation has allowed women to perform jobs that were prohibited to them in the past, for instance in the police and the armed forces. However, in these jobs women have had special difficulties to combine work and family commitments. For instance, recently some women formally complained to the Ministry of Defense that if their partners also performed these jobs, the two members of the couple were sent to different geographical places and had to live apart. Other women formally complained that while pregnant were not given destinies in accordance with their pregnancy. The regulations of the Police and the Armed Forces changed but only after some women formally complained. Episodes of sexual violence (including rape) have been taken place in these occupations. For instance, last year a female soldier formally denounced her superior of having raped her. The press reported anonymous declarations that this type of behavior is far from exceptional.

(v) Low fertility.

The Spanish fertility rate is still one of the lowest in the world. Although the causes of such a low fertility rate are numerous, it is clear that the gender equality legislation has not tackled the problem of the difficulty for Spanish women of combining work and family responsibilities.

Despite the relatively recent introduction in 1999 of legislative innovations to facilitate conciliation of work and family life, the Spanish welfare state still lacks a real family policy and has a scarce offer of social services. Paradoxically, this has lead women to opt for full-time jobs and long careers that will guarantee a full (contributory) pension in the old age, postponing maternity at an older age.

2. Limits of the Impact of Spanish Gender Equality Legislation at the Level of Employers

(i) Working conditions and the impact of restructuring.

New forms of organising the workplace are necessary to maintain a competitive position within a global economy.

Working conditions have been extensively analysed in Spain in the industrial sector, where few women are employed in comparison to men. As a consequence specific studies looking at women in sectors/occupations/firms were necessary in order to assess the limits of the impact of equality legislation on working conditions. One case study of the Spanish company *Alcatel Standard Eléctrica*, showed that women and men share the interest in participating in new working groups called development groups (*Grupos de desarrollo*). Women can further develop their communication skills in this working environment. However, they are limited by the low qualified jobs in the enterprise. On the other, they are also limited by the possibility to combine family and work, when work schedules are changed as a consequence of the work reorganisation (Licerias, 1995).

Another study by Licerias (1992) shows how restructuring processes have more impact on women employment than on men. This author studied the differential impact in Telettra España in 1992. At the time 24% of all women working in the company in comparison to only 8% of men, left the job by joining the program of incentivated retirement established by the firm. The communication enterprise funded in 1972 had up to 1992 a female share of 30%, mostly young women without previous experience working in the production line, in comparison to most qualified young men working in research and development departments.

However, according to Izquierdo et al. (1999) and Barberá et al. (2000) in some professions like the university teachers both women's attitudes towards their careers as well as their job output should be considered as important as working conditions.

Decentralisation of production impact women more than men. Some industrial sectors as for example the footwear industry use women homeworkers with longer working hours and lower wages than workers of the formal sector (San Miguel del Hoyo et al., 2000). Precarious working conditions as temporary contracts and lower pension rights are shown in rural industries (packing) in the region of Valencia (Alfonso Mellado (1997). Precarization is also appearing in public administration and the financial sector. In the Town Hall of Zaragoza in 1995, 11% of all women employed were on interim contracts while only 2.5% of men were (Secretaría de la Mujer de CC.OO de la FSAP-Aragón, 1996). In sectors like the finance sector where women had enter quite recently, an increasing polarizarion is appearing between primary (male) jobs and secondary (female) jobs. Women are employed in jobs under their formal qualification, lacking promotion, etc; this is the main cause for the absence of stimulus to proceed further in their careers and provokes lack of motivation in their job posts (Carrasquer, Noguera and Varella, 1996).

Finally, it has to be mentioned the externalisation of domestic tasks with the increasing access of women to the labor market. Two studies on domestic workers in Málaga and Madrid show that the structure of this employment sector has suffered important changes as a consequence of the increasing inequality of household income, the flexibilisation of the labor market in the 80's and immigration. The profile of the typical woman employed in domestic service has changed from young women immigrating from rural areas working and living within the household, to older women working by the hour and especialising in only some of domestic tasks for which there is increasing demand, such as caring old people. Despite the regulation of the labor relationship by Royal Decree 1424/85, there remains a heterogeneity working conditions, pay, etc. inside this sector, which is highly (if not totally) feminised (CC.OO, Unión provincial de Málaga, Secretaría de la Mujer, 2000 and Consultora de Economías de Escala, CC.OO and USMR, 1993).

(ii) Employers' perceptions and practices towards women.

Employers' costs related to maternity leave have decreased because it is now paid by the state. However, some employers still perceive that maternity leaves (and other family-related leaves) are costly for them because of the work reorganization that is necessary to replace the person on leave. Some employers pressurized their female employees not to take advantage of the whole period of maternity leave (16 weeks) but only a part. Other employers do not renew temporary contracts of pregnant working women. Both practices are illegal in Spain.

In general, employers consider the question of conciliation between family and work an individual problem to be solved by the employee. Domínguez Alcón (2001) refers to a survey conducted in 2000 through internet to a sample of persons that graduated in ESADE business school.

88% of all men and women interviewed had a couple; 20% of them stated that one member of the couple had to slowdown her/his career to assume family responsibilities.

(iii) Persistence of sexual harassment perpetrated by employers

The legislation that prohibits sexual harassment in the work place is often violated. The overwhelming majority of harassed women do not file a complain. Some victims do not conceptualize unwanted sexual advances in the work place as attacks against their intimacy or their sexual freedom, nor as episodes of gender discrimination. Rather, these victims consider such sexual harassing behavior as 'facts of life', which are certainly unpleasant but to a certain extent inevitable. It is difficult to quantify the phenomenon, mostly due to the fact that it lacks a precise definition. However, to have an idea of the extension of sexual harassment even if at the minor level, the study of CC.OO (2000) provides the percentage of 50.4% in 1999 and even a higher percentage (84%) is found in the study of Alemany (1998). Some factors favoring sexual harassment are, according to the study of CC.OO (2000), the unbalanced distribution of men and women by sector/occupation and the high proportion of women on temporary contracts. Pernas et al. (2000) highlight the tendency to blame the victim of sexual harassment.

As for employers, their position on sexual harassment and its regulation is a combination of ignorance and indifference, but not opposition, as in other countries. The majority of Spanish employers are of the belief that sexual harassment does not take place in their companies. Most employers also consider that it is a minor problem that does not require any investment or effort on their part. Similarly, employers' organizations have not included the fight against sexual harassment among their priorities.

Like the majority of employers, the majority of trade unions delegates behave as if sexual harassment were not a problem in the companies and sectors where they represent workers. Accordingly, most collective agreements do not contain any reference to sexual harassment (Valiente 1998).

Finally, the inadequacy of the judicial process to deal with sexual harassment is put forward by CC.OO, CONC, Secretaría De la Dona (1999).

3. Limits of the Impact of Spanish Gender Equality Legislation at the Level of Individuals and Households

(i) Persistence of wage discrimination against women.

Article 26 of the Workers Statute defines the wage as any form of remuneration. Even if the structure of wages appearing the previous regulation (Decreto 2380/1973 de Ordenación del salario) is already out of use, collective agreements do not show significant changes in this matter: the weight of the fixed component of the wage is only changing slowly towards a greater share of the variable part, that is still relatively small. On the other hand, the employer and the employee have now more autonomy and the traditional wage igualitarism promoted by collective bargaining is also being reduced (Escudero, 2002).

The structure of wages is predominantly guided by tables of wages related to occupational categories (71.2% of collective agreements affecting 70.2% of employees in 2001). Only a relatively small percentage of employees are subject to clauses with incentives related to productivity (27.2% of collective agreements affecting 22.1% of employees in 2001) (CES, 2002: 416).

Gender differences can be observed in the composition of the average gross monthly pay in 1995. Although the distribution between ordinary and extraordinary components of wages is 80%-20% for both women and men, within the main part of the wage, the ordinary pay, the basic pay and the supplements have a different share for women (60%-20%) than for men (50%-30%) (Zarapuz, 2001). Overtime pay has a very small weight in the average wage but even though the weight is greater for men (1.2%) than it is for women (0.5%). The gender pay gap in the gross monthly pay in 1995 that was 69%, according to the Structure of earnings survey, is even higher for the basic component of wages (salario base) (81.4%) and for extraordinary payments (pagos extraordinarios) component (70.6%), the gender gap being lower for the supplements (complementos salariales) and overtime payment (pagos horas extras) (27.9%). However, despite the fact that the supplementary part of the wage is only representing between 20 and 30% of the wage, nearly a half of the gender pay gap is due to this supplementary component, followed by the basic pay that contributes in 30% to the gender pay gap, 18% the extraordinary payments and finally only 3% the overtime payments. It has to be noted that the supplementary payments contain an important part for seniority, that tend to diminish, and a part related to the characteristics of the job (dangerous hazard, toxic job, painful tasks, night working, functional polyvalence, etc.). The latter tend to be associated more to male than to female jobs.

(ii) *Persistence of sexual division of labor within the household.*

In spite of the progress made within most households regarding a more equal division of household and caring tasks among women and men, gender inequalities persist. In practice, in many Spanish households, the main (or sole) family responsibility of many men is to serve as the breadwinner, while women (whether workers or homemakers) take responsibility for most domestic and care work.

Opinions and attitudes of the Spanish population have evolved more rapidly than the actual distribution of traditional roles. The general acceptance of paid employment for women is a recent phenomenon in the Spanish society. In 1975 only 30% of people responded affirmatively to the question of whether they were in favor of women going out to work in case her income was not needed in the household. And 52% thought that caring small children was the sole responsibility of the mother. Moreover, 82% believed that women should be in charge of housework. However, in 1987, more than half of men (56%) thought that women should go out to work and men can stay at home if this arrangement better fit their preferences (Pérez Díaz, Chuliá & Valiente, 2000: 150-152).

(iii) *Very modest effects on men's non-traditional roles.*

The proportion of fathers who take maternity leave in place of mothers is still very small. The Spanish Labor Force Survey provides data segregated by sex of wage earners who are not working because of maternity leave during the week when the survey questionnaire is administered. In the third quarter of 2002, 2 percent of these earners were men (Instituto de la Mujer 2003. *Mujeres en cifras*, www.mtas.es). Other type of unpaid leave up to three years long, to care for children under three years old, are seldom used by women, and not at all by men. It is not only the fact that it is unpaid the reason to discourage both women and men from opting for it. There are many disincentives on the long run. Even if the whole time of this type of leave is computable for seniority and for the first year leave workers maintain the same post and retirement rights, longer leaves lead to losing pension rights both in term of the contribution period and the unpaid amount of social security contributions.

(iv) Low participation of women in civil society.

Equality of access to employment may have promoted more equal participation in civil society, including unions and employers' organizations. However, men still outnumber women as members, activists and leaders of unions and employers' organizations³⁵.

To our knowledge, membership, activism and leadership within unions have not been studied in depth from the perspective of gender³⁶. Similarly, we do not know of any quantitative study on the leaders, activists, and members of employers' associations made with an analytical focus on gender. Some female employers have created their own organizations. There are also organizations of female managers. Nevertheless, there are no quantitative studies of these organizations either.

As for qualitative research, it has been argued that generally speaking most female employers know that employers' associations exist, but do not know exactly what their functions are. Some female employers join these associations for reasons of prestige. In general female employers think that these organizations are of little use. Therefore, while some female employers join employers' associations, they pay membership fees but do not attend the meetings. Other female employers prefer to solve their own problems through their own means (for instance, hiring a lawyer), rather than using the services and support provided by employers' associations (to which they do not belong) (Área de Estudios Territoriales y de Diseño 1986:133-135).

4. Positive Action and Good Practices.

Gender equality policies in Spain have been developed from the late 80's, mainly at the national level but also, if only a few action plans, at the local level. Most of the equality plans of the Autonomous Communities started at the beginning of the 90's³⁷. According to Bustelo (1999), the last plans show fewer measures than the previous ones, more concrete measures, as well as an increasing influence of international equality policies.

Despite the fact that collective agreements are still a way to keep working discrimination mechanisms in the workplace (Llopis, 1999), positive action has also been introduced in collective bargaining³⁸. One important factor is the long tradition of women's secretaries (Secretarías de la

³⁵ In 1994, the percentage of men involved in political parties and civil associations (25.6%) doubled that of women (12.6%). The percentage of women involved in women's associations was 3.6%. (Morales Díez de Ulzurruín, 1999).

³⁶ There are some exceptions to this general rule, even if only referring to some regions of Spain or some sectors of employment. In the first case, we have the study of Mandoza Vázquez (1998) for Catalonia; CC.OO, Unión Sindical de Madrid Región, Secretaría de la Mujer (1991) for Madrid and Jiménez Guzzo, Martín Martorell and Vázquez (1991) for the Canary Islands. As to the second type of studies we have Franco and Bernabé (1998) for public administration federation of CC.OO and Gabinete Técnico de la Federación Minerometalúrgica de CC.OO (1997) for the metal industry.

³⁷ Some Autonomous Communities like the Vasc Community have been particularly active in establishing equality policies (Martinez Hernández, 1999).

³⁸ Equality clauses in collective agreements (EOC) show a positive trend, as well as the number of employees covered by EOC. The percentage of agreements including EOC was relatively low, but increased from 11.8% in 1993 to 14.6% in 2000, covering now more than one out of every three employees.

Mujer) in Spain (founded 25 years ago, at least in one of the main trade unions: CC.OO) (Brunel and Vilches, 1999). The introduction of women's views in the trade union with their own organisation inside the trade union contribute to reflect different perceptions of trade unions and politics (Borderías Mondéjar and Tébar Hurtado, 1998, 1999 and 2000). This series of studies evidence the changes experienced by women at different points in time. From the interviews of women of different age groups, they show a more visible relationship (if often contradictory) between feminism and trade union activism now than in the past. In addition, they show that the perceived low participation of women in trade unions, mostly due to time constraints for family responsibilities, provided a feminised culture to unions.

The most recent document on good practices in collective bargaining dates from 17 February 2003 (CC.OO, 2003). This is the result of a previous agreement (1998) between the two main trade unions CC.OO and UGT on gender equality practices in collective agreements, latter on also subscribed by employers' organizations (CEOE and CEPYME). The study consists in an in-depth analysis of nine selected collective agreements and a revision of a wider sample of agreements looking for good practices. Two types of clauses favoring equal treatment are considered. The first type are examples of clauses incorporating legal regulations already in force in Spain. The second type are clauses that improve the existing national legislation to date, in order facilitate the adaptation of current practices to Directives 2002/73/CE and 2002/78/CE. All areas of employment are dealt with in this study: employment access, stability in the job, equal pay for work of equal value, career promotion, training and sexual harassment.

Good practice in Spain is mainly developed through the elaboration of guides of behaviour. At a general level, this occurs particularly in relation to job evaluation and professional classifications³⁹. Given the extremely small part played by systems of objective job evaluation in employment practices in Spain (Pérez del Río, 1993), this is an important development to combat indirect discrimination. Currently an interesting and ambitious project on equal pay is the ISOS project (Proyecto ISOS. Diferencias Salariales entre mujeres y hombres y valoración de puestos de trabajo, [http://www.mtas.es/instituto de la mujer](http://www.mtas.es/instituto%20de%20la%20mujer)). It consists basically in the construction of a computer program for the evaluation of jobs using explicit and non gender biased criteria. The purpose is to be used to detect specific case discrimination in a simple way and help the labor inspectorate to amend it.

Education and training is another area where good practice has been experienced in Spain. The analysis of sexism in a sample of books for infant, primary and secondary education appears in CC.OO., Federación de Enseñanza, Secretaría de la Mujer (1995). Guides for training women relates to part-time workers (CC.OO, FOREM, FORCEM, FSE, 2000) and continuous training (Secretaría Confederal de la Mujer de CC.OO, FORCEM, FSE, 2000; Mendoza, 2000; Méndez Llaneza &

³⁹ See for example the CODEX project for the metal industry (CC.OO. et al., 1999) and The PRISMA project (CC.OO. et al., 2000, 2001) for all employment sectors after the derogation of the labor ordinances (Ordenanzas laborales) in 1995. As to the occupational classification, despite a certain renovation, there remains some continuities with the old system of labor ordinances, that were highly discriminatory towards women. The great majority of agreements use a mixed system, but there are also some agreements working towards a modern system of occupational classification (Moltó, 2002:).

Sánchez Rosado (Coord), 2001; FORCEM-Andalucía, Secretaría de la Mujer, 1998; FOREM, CC.OO, 1998; Fundación Formación y Empleo (Castilla y León) (ed.), CC.OO., Fundación Formación y Empleo (País Vasco), 1998, Confederación Sindical Secretaría de la Mujer, 2000; Centro de Estudios e Investigaciones Sociales de la Industria (CEISI), 2000). Those guides have as the main purpose to be used in negotiations with the employer to facilitate women with family responsibilities access to training; some guides make special reference to specific sectors, occupations or regions.

Finally, positive action also exist at the level of the enterprise. For instance, the project called MUJER 2000 was developed in the chemical industry and textiles (CC.OO et al., 1995). A total of 14 companies in the area of Madrid were engaged in this project. After a study of the situation of women in each of the enterprises, a set of 25 proposals were adopted and the compromise was acquired to put them into practice. A more ambitious project covering different sectors as well as different regions was the NOW-LUNA project 1995-1998 (CC.OO, Confederación Sindical, Secretaría de la Mujer, 1998). However, only five out of the 19 enterprises engaged in this project obtained the equality award provided by the Spanish Ministry of Labor and Social Affairs.

PART III

THE SOCIAL AND ECONOMIC IMPACT OF THE RECASTING OF DIRECTIVES ON EQUAL TREATMENT IN SPAIN

Introduction.

In this part the social and economic impact of the recasting of directives on equal treatment is considered. The objective of the refonte is the consolidation of all directives in this area into a single directive. It aims at the simplification and modernisation of existing directives. The innovative provisions of Directive 2002/73/EEC, extend the scope of Directive 76/207 (equal treatment), to the subject matter of Directives 75/117 (equal pay), 79/7 (statutory schemes), 86/378 (as modified by the Barber judgement) (occupational schemes) and 97/80 (burden of proof) and of the extension of the burden of proof into occupational pension schemes.

We examine the possible impact in Spain in terms of costs and benefits. Finally some suggestions are provided at the end of this report.

1. The socio-economic impact in Spain of removing the exemption with respect to actuarial calculations with respect to occupational pension benefits for women and statutory pensions.

Legislation in Spain do not permit different actuarial calculations for women and men. Both, women and men receive the same pensions for the same contributions. Employers make the same contributions to defined benefit schemes on behalf of female and male workers. Therefore, the removing of the aforementioned exemption will have no socio-economic impact in Spain. There is no difference, neither with regard to the age or access to the pension nor with regard to the survivors right. In fact, legislation and collective agreements which provide a right for the wife are automatically considered to be granted to the husband too (Legal impact assessment of the Equality Directives: condensed report 2003: 50).

However, even if the Spanish pension system do not establish any difference between women and men, neither in the award of pensions nor in their amount, this does not mean that the actual level of pensions is the same. The differences are not the result of the system but of the effect on pensions of the different situation of women and men in the labor market. Thus, in recent years data on new retirement pensions show that: (i) while 32.5% of women had paid into the system for 35 years, giving them the right to a full pension, 81% of men were in this position; (ii) On average, women had the right to 74.4% of their base pension, according to the number of years paid in, while men had an average of 83.1%. Consequently, the combined effect of the lower base pension and the lower percentage applicable to it because of fewer years paid in, meant that new pensions for women were 69% of men, on average (Ministerio de Trabajo y Asuntos Sociales, 2002: 25-26).

2. The possible socio-economic impact in Spain of the introduction of Directive 2002/73/EEC, as a result of the refonte, into the Spanish legal system.

The Spanish legal expert identified that the introduction of the innovative provisions of Directive 2002/73/EEC, as a result of the refonte, into the Spanish legal system will force the Spanish legislator to incorporate explicitly the concept of indirect discrimination into the Spanish legislation. In fact, this concept was introduced for the first time in 1991 via the case law in a decision of the Constitutional Court. Despite the fact that many lower courts have used this concept since then, some national courts still ignore EC law. As a matter of fact Spanish statutes do not prohibit indirect discrimination on the grounds of sex. (Legal impact assessment of the Equality Directives: condensed report 2003: 19). This is particularly important in relation to wage discrimination and on the burden of proof. Many collective agreements contain discriminations, especially indirect discrimination on pay. The burden of proof Directive is an important means to make sex equality litigation easier. However, even if in Spain the burden of proof appears in article 96 of Law of Labor procedure (Ley de Procedimiento Laboral 1990), many lawyers do not use it or some judges do not apply it correctly. As a general rule EC law is not well known by workers and lawyers (Legal impact assessment of the Equality Directives: Spanish report 2003: 2).

As in other Southern European countries, in Spain there is hardly any litigation on equality issues. This has a negative impact on the overall effectiveness of equality law. The simplification and consolidation of EU directives should have a beneficial influence as it facilitates the knowledge and application of the concept of indirect discrimination.

3. Current shortcomings of the legislation in Spain with respect to the achievement of equal pay and the closing of the gender pay gap.

(i) To what extent would a requirement for an independent review/analysis of job grading be helpful in strengthening the Spanish equal pay legislation?

In principle, independent reviews/analyses of job grading are a good idea to strength equal pay legislation, because these are concrete instruments to implement a laudable principle hard to apply: that of equal pay for work of equal value. The Spanish legislation does not require the establishment of independent reviews/analyses of job grading. Job grading is especially important in labor markets segregated by sex, as the Spanish labor market is. The Spanish legal expert recommends the introduction of such independent reviews/analyses. We are more skeptical about the effectiveness of this type of instruments in the Spanish context. Independent reviews of job grading are costly devises. In order to make these reviews, experts with knowledge and time to make them are necessary. Taking in mind the potential benefits of the measure but also its costs, we would not oppose the introduction of such independent analyses, although we do not recommend them, unless there is an explicit obligation for the member states to monitor pay practices in the workplace, as suggested by the Spanish and other legal experts (Legal impact assessment of the Equality Directives: condensed report 2003: 40).

(ii) What is the current involvement of the state and/or social partners in monitoring equal pay and in what ways could monitoring be made more effective?

At the central state level, the state and the social partners are involved in monitoring equal pay, although this monitoring does happen only sporadically and superficially. No institution or body composed of representatives of the state and social partners is in charge of monitoring exclusively equal pay and has enough resources to fulfill this task adequately.

The main gender equality institution at the central state level is the Women's Institute (*Instituto de la Mujer*, WI). One of the aims of WI is to oversee the implementation of gender equality policies. It has been mainly through the WI's legal department and the meetings of the advisory council (*Consejo Rector*). In the advisory council, ministry representatives have to report on the implementation of gender equality policies within their area of responsibility. For example, the representative Ministry of Labor and Social Affairs has to report on employment matters, including equal pay. The WI, however, does not have any power to sanction a state body that fails to implement equality measures or that implements policies in an unsatisfactory way. Probably because of these limits, WI staff has concentrated their efforts on other WI objectives they consider easier to achieve.

Another WI's goal is to receive and handle women's discrimination complaints (*denuncias*). This goal has been fulfilled to a very limited extent because the WI can only provide legal information to victims and initiate a legal complaint with the appropriate authorities when women victims come forward on their own. It can neither represent women in court nor lodge complaints without victim's permission. The number of these complaints has been very low (less than 100 between 1986-1993) (Valiente 1995:229-30).

Monitoring equal pay could be more effective with the establishment of an institution or body composed of representatives of the state and social partners, in charge of monitoring exclusively equal pay, and has enough resources to fulfill this task adequately. However, this reform is costly. A less costly (but also less efficient) way of better monitoring equal pay would be to increase the presence of women among the rank and file and leadership of labor unions. More women in the unions means more union members and leaders interested in gender equality in general and in equal pay in particular. In fact, the secretaries of women in the unions already have played an important role in introducing both positive action and a greater representation of women in collective bargaining.

The Spanish government is presently implementing the Directive 2002/73. The preparatory legislation allows for the possibility of the WI taking action against discriminatory provisions in collective agreements (Legal impact assessment of the Equality Directives: condensed report 2003: 35).

(iii) How restrictive is the current restriction of EU law to pay comparison within the same employer for the purpose of establishing equal value or work rated as equivalent? What would be the potential benefits in the Spanish context of extending the scope for comparisons across employing organizations or allowing the use of hypothetical comparators for equal pay claims?

A major cause of unequal pay for women in Spain is the concentration of women in different occupations and sectors than men. Therefore, it would be beneficial to extend the scope of comparisons across employing organizations and allow the use of hypothetical comparators for equal pay claims. However, the current EU pay law is still often not effectively implemented. Therefore, a pending and useful reform is still to apply the law as it is now.

4. What are the possible socio-economic impact in Spain as identified in the legal impact assessment document of eliminating the derogations under Directive 79/7 as a result of the refonte?

The legal impact assessment report identify for Spain the impact of eliminating the derogations under Directive 79/7 as a result of the refonte.

In Spain, it is believed that the elimination of the existing derogation would not have any consequences for two main reasons. Firstly, traditionally the social security system in Spain is exclusive to the public and only recently the system of complementary plans of pensions paid by companies has been incorporated to the collective negotiation. Secondly, there is no difference of treatment between men and women in the public system of pensions neither in the complementary plans of pensions nor with respect to age of retirement nor in the demanded requirements. Actuarial calculation does not exist in either pension system (Legal impact assessment of the Equality Directives: condensed report 2003:).

5. To what extent does Spain make use of the potential for positive action as allowed under European law? Would it be useful if European equality legislation were to be more active in promoting positive action as a means of achieving gender equality?

In Spain, as in other EU countries, the implementation of positive action is limited with regards the scope given to this concept. Positive action policies at national level do not reflect the proactive approach required under Articles 2 and 3 EC (Legal impact assessment of the Equality Directives: condensed report 2003: 37).

Spanish governments put in place positive actions in favor of women but to a limited extent. Most positive actions are of pilot nature, in the sense that these affect only a small number of women and are implemented only during a certain period of time. Therefore, in the Spanish context it would be useful if European equality legislation were more active in promoting positive action as a means of achieving gender equality. Positive actions would be seen as more legitimate in Spain if strongly recommended by the European Union (EU).

Addenda: Other recommendations to enhance equality of women and men in the Spanish labor market

As stated in the conclusions of the legal impact assessment of the Equality Directives report, all experts agree that the most appropriate instrument to achieve gender equality is a binding measure, in particular a directive, with direct effect. As the legal report put it, there must be a “hard core hard law”, which, however does not detract from the fact that there are other instruments more suitable for achieving factual equality in economic life (Legal impact assessment of the Equality Directives: condensed report , 2003:). For example, as differences in pensions between women and men is the result of lower social security contributions for shorter periods for women than for men, in order to reduce future differences in the pension levels, promoting the incorporation of women into the labor market both directly and indirectly (such as measures for reconciling work and family life) are needed. Note that family responsibilities decrease the probability of leaving the job in the case of men while it increases that of women (Summary of the Final report on the Assessment of the European Employment Strategy: Spain, 2002: 44).

We have then added this section, which comprises recommendations to enhance equality of women and men in the Spanish labor market, that are not directly deduced from the legal framework.

A. Recommendations to increase the impact of Spanish gender equality legislation at the level of society

1. Measures to increase female activity and employment rates in Spain

The Spanish female activity and employment rates are still significantly below the EU average. Then we recommend that the state fosters female employment in the private sector, for instance, exempting employers to pay social contributions when hiring women in some circumstances. We are aware that subsidies to employers have to be implemented carefully, because these can be used by employers as permanent state subsidies for their companies instead of temporary increase the presence of women among active and employed people.

2. Measures to increase surveillance on the conditions of women's access to jobs traditionally banned to them

Historically women were not allowed to work in the security forces and army (some exceptions existed). In the past decades, more and more women have been entering in these two sectors of the public employment. The state has to ensure that these women can combine work and family responsibilities as women working in other sectors. The state also has to ensure that these women are not victims of sexual violence while performing their jobs.

3. Measures to de-segregate the education system regarding students

Girls and boys still have different preferences regarding topics. Usually, boys are over-

represented among those who prefer educational options that are useful to find a job after education. We recommend measures that help erode different education preferences because of sex.

4. Reforms in the so-called social salaries

Spain has not any universal system of income maintenance for people of working age. However, in the 1980s the regions started to establish programs to maintain the income of some poor people of working age: the so-called "social salaries". The majority of beneficiaries of social salaries are now women (Ayala Cañón 2000). Social salaries have to be improved, in order to help beneficiaries not only to have an income but also to have more chances to enter the labor market.

5. Programs to increase the presence of women in higher level jobs

Men still outnumber women as people in decision making positions in companies. Research have already identified causal factors for this under-representation of women among decision makers in the market. These factors refer to the demand of female bosses by companies and to the supply of women qualified enough to held higher level jobs. Programs to increase the presence of women in higher level jobs should tackle both the demand and the supply of women directives.

6. Measures to foster that women return to the labor market after the birth of their children and evaluation of the implementation of those already in place

One of the main obstacles to the increase of the Spanish female activity and employment rates are the difficulties to combine work and family responsibilities. Measures to help combine these two responsibilities will foster female activity and employment. It is important not only to establish new measures or to improve those already in place, but also to evaluate the usefulness of the existing measures, such as the 100 euros per month paid since January 2003 to working mothers with children younger than three years.

7. Measures to combat the low fertility rate

Given the low fertility rates in Spain, some measures are available to policy makers including the reception of immigrants from developing countries. The so-called "natalist" policies are usually not very useful to encourage people to have more children. Rather, the fertility rate would increase if jobs were more numerous and access to housing easier.

B. Recommendations to increase the impact of Spanish gender equality legislation at the level of employers

1. Increase the surveillance of private firms

Gender discrimination takes place in private firms in many fronts, including pay and promotion. Unions and the labor inspectorate should increase surveillance in private firms.

2. Increase in the transparency and formal procedures of hiring and promoting in private firms

Members of minorities tend to be discriminated with special intensity when hiring and promotion takes place through informal mechanisms instead of formal procedures. Unions should demand formal procedures while enterprises hire and promote workers.

3. Establishment of internal mechanisms in private enterprises to deal with sexual harassment cases

Sexual harassment can be conceived as a type of discrimination against women (the majority of victims). Many victims of sexual harassment would like their companies to have internal mechanisms to deal with these cases instead of initiating a long (and uncertain) legal process. Such internal mechanisms are very rare in Spanish firms. Therefore, we recommend the establishment of such internal mechanisms.

C. Recommendations to increase the impact of Spanish gender equality legislation at the level of individuals and households

1. Campaigns in favor of a more equal division of domestic and caring tasks in the household

Campaigns in favor of a more equal division of domestic and caring tasks in the household have a long tradition in Spain since the first were put in motion in the 1980s. A more equal division of domestic and care labor within families will help women to participate in the labor market.

2. Promotion of men's non-traditional roles

Very few men perform non-traditional roles for men, such as taking a maternity leave to care for their children. Two types of devices can be undertaken. On the one hand, policy makers can develop measures only for men (for instance leaves for fathers). If men do not take these leaves, nobody does. This is different from the current situation, when most family-related leaves can be taken either by the mother or the father. On the other hand, in the absence of leaves only for men, the state could persuade some men to take the, or at least make sure that women who take these leaves are not penalized by employers.

3. Measures to increase women's presence in the rank-and-file and leadership of unions and employers' organizations

Collective bargaining is made by unions and employers' organizations. These also actively participate in the elaboration of labor, economic and social policy. Higher proportions of women in unions and employers' organization means higher proportions of people aware of gender

inequalities and more individuals in favor of measures to combat gender discrimination.

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