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The Impact of the EU on Equal Pay in Ireland

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Abstract

This paper discusses and analyses the impact of EU non-discrimination law, specifically gender related non-discrimination law at Member State level. In particular, the paper focuses on the specific area of gender related non-discrimination law that is concerned with equal pay. As a result, the central focus of this paper is assessing the impact of European Union (EU) policy on the area of equal pay at Member State level. To do this, this paper has chosen Ireland as a case study. Ireland is an interesting case to study the impact of non-discrimination law in the area of equal pay, as, when Ireland joined the EU, it was a conservative, patriarchal society that was heavily influenced by the teachings of the Catholic Church. Ireland thus acts as a research site in order to gauge the impact of EU pay related gender non-discrimination law in a country that in many ways was not ready for the changes that EU legislation brought. This analysis is done from a political science perspective that uses Europeanization as a theoretical model which allows for the analysis of the impact of EU policy at domestic level. Due to this discussion and analysis we can begin to answer the question of whether or not EU legislative initiatives have led to Europeanization of the area of equal pay in Ireland.

1. Introduction

This paper aims to discuss and analyse a particular aspect of the Irish experience of EU social policy. Equality is a founding and underpinning principle of EU social policy while gender equality in particular has come to be viewed as one of the central pillars of a social Europe (Caporaso and Jupille 2001). With regards to Ireland, the main impact of EU social policy has been felt in the area of gender non-discrimination law. Therefore, the focus of this paper is to investigate the impact of the EU on Ireland in this area by looking at the case of equal pay and whether EU non-discrimination law in this area has led to a furthering of social rights for women at Member State level. When Ireland joined the EEC (European Economic Community) in 1973 one of the first things the Irish government had to do as a Member State was address its gender equality policies, first and foremost in the area of equal pay. Therefore, Hart (1999) argues that any analysis of Ireland's membership has to query the impact of the EU on women in particular. Thus, the research question of this paper is what has been the impact of the EU on domestic legislation and individual rights regarding equal pay in Ireland? This paper focuses on assessing the impact of the EU through Article 119 Treaty of Rome (after the entry into force of the Treaty of Amsterdam in 1999, Article 141 EC Treaty and now Article 157 in the Treaty on the Functioning of the European Union) and the 1975 Equal Pay Directive (superseded by the Recast Directive 2006/54 [2006] OJ L 204) as these were the first legislative initiatives in the area of equal pay at EU level.

This paper focuses on a single case study – Ireland – to assess the impact of the EU through legislative means on the area of equal pay. In doing so, this paper utilises the concept of Europeanization as a theoretical model which will be used to frame and guide the research of this paper. The paper is structured as follows. Section two outlines the contribution of this paper. Section three presents an account of Europeanization and how it was used to assess the impact of the EU in the area of equal pay at Member State level. Section four offers an account of the beginnings of change in the area of equal pay in Ireland. This section focuses on the domestic level and by doing so documents the moment that the EU came into play at domestic level regarding equal pay. Section five and six mark the beginning of a discussion of the impact of the EU and discusses the level of 'misfit' between Irish and EU policy norms as well as the mediating factors affecting the potential level of change the EU can have in the area of equal pay in Ireland. Section seven traces developments at EU level regarding equal pay while section eight presents the impact the EU has had on the area of equal pay in Ireland and finally the conclusions of the paper are presented.

2. Contribution to the Literature

While this paper is limited to a single case study with a focus on a specific area of gender equality it nonetheless makes a contribution by analysing legal frameworks in the context of socio-economic developments. The gender pay gap continues to be a topic of debate within both academic and policy circles (McGuinness *et al.* 2003: 1) with many remaining unanswered questions regarding the impact of the EU in this area. Falkner (2008) argues that while the Europeanization of social policy can result from either legislative means or New Modes of Governance neither have been empirically addressed to a sufficient extent. This paper aims to contribute to addressing this gap. Thus, this paper can contribute to our knowledge of the Europeanization of social policy, in particular in relation to equal pay, in a Member State through legislative means. By using Ireland as the 'research site' (Common 2001) this paper contributes to the range of case studies used in Europeanization research as

few studies have focused on the relationship between the behaviour of smaller member states in the EU and the degree of their domestic adaption to the external environment of the Union (Hanf and Soetendorp 1998: 3).

Recent studies such as Laffan and O'Mahony (2008) and Rees *et al.* (2009) have contributed hugely to our understanding of the Europeanization of Ireland and Irish policy areas. This paper aims to add to this body of research by focusing on the impact of the EU on equal pay in Ireland which is an area not addressed by these studies. McGown and Murphy (2003) also argue that much research focuses on Member States such as France and Germany and neglects Ireland. Ireland is thus an important aspect of future research as it combats the restriction of Europeanization research to the "usual suspects" such as Germany, France and the UK (Vink and Graziano 2008: 17).

3. Europeanization

3.1 The concept

Europeanization is a concept that is used to explain a variety of changes within European politics and can "be a useful entry-point for greater understanding of important changes occurring in our politics and society" (Featherstone 2003: 3). Since the 1990s Europeanization is a concept that has increased in popularity in academic research seeking to understand the impact of the EU (Vink and Graziano 2008). Yet from the literature it is clear there are numerous ideas of what Europeanization entails. Europeanization is a complex process that is yet to be accurately defined and is a term that is used in different ways and for different purposes (Bomberg and Peterson 2000). Moumoutzis (2011) argues that even though the usage of Europeanization has increased in the academic literature an agreed meaning of Europeanization has not yet been resolved. Dyson and Goetz (2002: 2) have pointed out this difficulty relating to Europeanization,

it is sometimes used narrowly to refer to implementation of EU legislation or more broadly to capture policy transfer and learning within the EU. It is sometimes used to identify the shift of national policy paradigms and instruments to the EU level. (Other)....times it is used in a narrower way to refer to its effects at the domestic level....or in a more expansive way to include effects on discourse and identities as well as structures and policies at domestic level.

McGown and Murphy (2003: 183) also argue that "different authors have approached the subject from different viewpoints and have placed different emphasis on whom and how it impacts". As a result, Europeanization has often been viewed as a "disorderly field" (Howell 2004: 4) but nonetheless a useful concept (Olsen 2002) (Moumoutzis 2011).

In 1994 Ladrech set in motion the discussion on Europeanization and ultimately the emergence of an ever-growing body of literature on the concept. Ladrech (1994: 69) offered one of the first definitions when he defined Europeanization as

an incremental process re-orientating the direction and shape of politics to the degree that EC political and economic dynamics become part of the organisational logic of national politics and policy-making.

This definition suggests Europeanization is a process of 'down-loading' for Member States and is therefore associated with 'top-down' procedures. Buller and Gamble (2002: 17) acknowledge this and define Europeanization as "a situation where distinct modes of European Governance have transformed aspects of domestic politics". Other scholars also recognise Europeanization as a process "of influence deriving...from European decisions and impacting member states' policies and political and administrative structures" (Herriter *et al.* 2001: 3) and that ultimately Europeanization "involves a response to the policies of the European Union" (Featherstone 2003: 3). The emphasis in these approaches is on "seeing the locus of change as a hierarchical relationship between the EU and the national" and "they tended to emphasise the reactive and involuntary nature of adaptation" (Adshead 2005: 159). As a result, these approaches correspond with a 'top-down' approach to Europeanization. 'Top-down' Europeanization is the most widely used approach (Lenschow 2004) (Mulcahy 2009) (Adshead 2005). Top-down Europeanization was initially used to assess the impact of the EU on policy areas governed by the Community method (Moumoutzis 2011). The 'Classic' Community Method (CCM) dates back to the founding of the EU (1957). The CCM involves a transfer of legislative power to the EU, in particular to the European Commission and the European Court of Justice. This transfer of legislative powers to the European Union in certain policy areas means that it acts as a superior legislator in these areas and "assumes a shadow of hierarchy and coercion mechanisms to induce compliance, namely adaptational pressure backed up the European Court of Justice" (Mulcahy, 2009: 28). Vink and Graziano (2008) state that the focus initially on 'top-down' Europeanization was in order to distinguish the Europeanization research agenda from traditional approaches to European integration. This top-down approach to Europeanization has been the most popular use of the concept (Lenschow 2004).

Researchers like Börzel (2003) and Risse *et al.* (2001) also recognise that Europeanization can involve 'up-loading' by Member States or 'bottom-up' Europeanization (Howell 2004) where Member States project their priorities at EU level to avoid potential 'misfits' when they need to transpose EU legislation (Laffan and O'Mahony 2008). Lenschow (2004: 59) points out that the EU can provide a point of reference for domestic actors "who not merely react to European impulses but anticipate such impulses by inducing bottom-up processes changing the European level or by 'using' or 'endogenising' Europe in domestic politics independent of specific pressures from Brussels". Member states as a result can project their own domestic issues to EU level (Bomberg and Peterson 2000). Radaelli (2003: 30) offers one of the broadest definitions of Europeanization,

Europeanization consists of processes of a) construction, b) diffusion and c) institutionalization of formal and informal rules, procedures, policy paradigms, styles, 'Ways of doing things' and shared beliefs and norms which are first defined and consolidated in the EU policy process and then incorporated in the logic of domestic (national and subnational) discourse, political structures and public choices.

Dyson and Goetz (2003: 20) also recognise the broadness of Europeanization and speak of it as a circular process and as a

complex interactive top-down and bottom-up process in which domestic politics, politics and public policies are shaped by European integration and in which domestic actors use European integration to shape the domestic area.

As a result Europeanization is increasingly being conceptualised

as a process that involves not only hierarchical (top-down) processes, but also bottom-up processes, whereby domestic actors seek to upload norms to the European arena, and horizontal processes, whereby norms can be diffused across member states using the EU as a facilitator of norm and policy diffusion (Mulcahy 2009: 23).

Hence, the definitions apparent in the Europeanization literature acknowledge Europeanization as a 'top-down' process, as well as a 'bottom-up' and round-about process (Rees and Connaughton 2009). In fact Europeanization can involve all three processes (Rees and Connaughton 2009). Börzel and Risse (2012) suggest that a common problem is that researchers often prejudge the role of the EU as the source of change domestically. Recently, it has become more apparent within Europeanization research that a focus on the domestic level has come to be a crucial aspect of assessing the impact of the EU. As a result, Europeanization research requires starting at "domestic level with subsequent identification of the effects and pressures stimulated by the diffusion of European integration" (Rees and Connaughton 2009: 16). This focus on the domestic level ensures that change is not overly attributed to the EU and research takes account of differing explanations for change (Radaelli 2012).

3.2 identifying impact of the EU: adaptational pressure and misfits

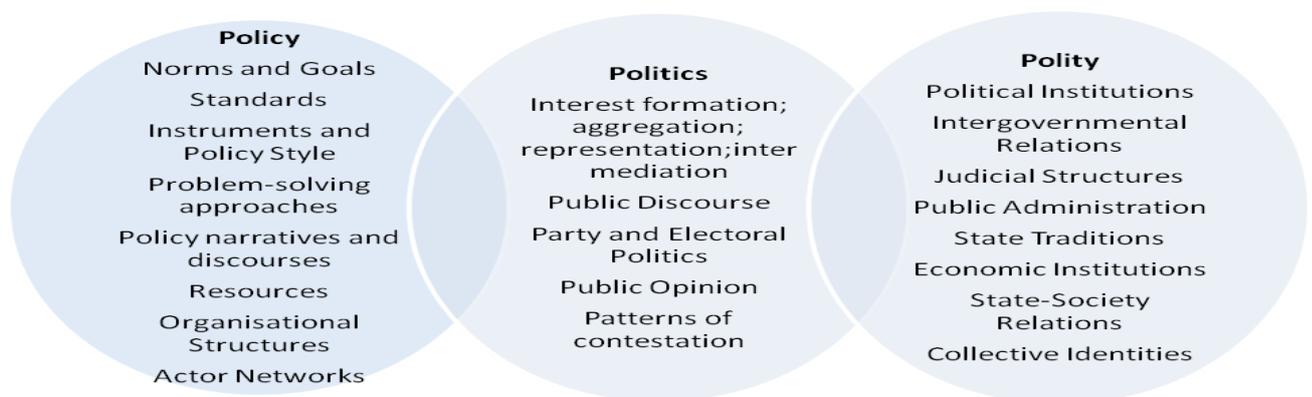
It is important to not just assess whether the EU has mattered but the degree to which it has mattered. The potential impact of the EU is dependent on the level of adaptational pressure exerted on the domestic level as well as the extent to which mediating factors can affect this level of change. The 'misfit' explanation for change suggests that in order for the EU to elicit change at domestic level, the EU initiative must provide a challenge for domestic actors and institutions (Lenschow 2004). Börzel (2005: 50) defines 'misfit' as a situation that occurs "only if European policies, institutions and/or processes differ significantly from those found at the domestic level, do member states feel the need to change". Risse *et al.* (2001) outline in their work a three-step approach to studying Europeanization of which the idea of 'misfit' or in other terms the level of 'goodness of fit' is a central element. The first element of the three step approach is identifying the relevant Europeanization process apparent at EU level and whether it is "formal and informal norms, rules, regulations, procedures, and practices" (Risse *et al.* 2001: 6). These different types of processes "necessitate some adjustments on the domestic level of the member states so that states can be in compliance with EU norms, rules and procedures" (Risse *et al.* 2001: 6). The second aspect of the three-step approach is the 'goodness of fit' element between the Europeanization processes outlined above and what is at domestic level (Risse *et al.* 2001). 'Goodness of fit' is associated with the level of adaptational pressure applied on the domestic level (Risse *et al.* 2001). Risse *et al.* (2001) outline that the level of adaptational pressure determines how much domestic institutions, norms, rules etc. have to change in order to be in line with what is emanating from the EU. As a result, "a 'misfit' or incompatibility between European demands for change, on the one hand, and domestic policies, institutions, and political processes, on the other constitutes a necessary condition for domestic change" (Börzel and Risse 2012: 6). However, this impact is mediated by domestic features (Börzel and Risse 2012). The third element of the three-step approach focuses on these mediating factors for explaining the degree of domestic change (Risse *et al.* 2001). Börzel and Risse (2003: 63) argue that 'misfit'

is only the necessary condition for domestic change. Whether misfits produce a substantial effect at the domestic level depends on the presence of various factors facilitating adaptation

and serving as catalysts for domestic change. Only if and when these intervening factors are present can we expect a transformation of policies, politics, or polities in the member states.

As a result, mediating factors at domestic level will shape the outcomes of Europeanization (Risse *et al.* 2001). For example “cultural factors and state tradition can be important in shaping the way in which European legislation is received at the national level” (Rees and Connaughton 2009: 19).

An important element of the Europeanization process is outlining the expected areas in which the EU can have an impact. The EU can impact at domestic level through a broad range of phenomena, “...the process of Europeanization may take place via the constraining power of legislation, ideational and learning processes of socialization and convergence around shared paradigms of public policy, the re-calibration of identities and material resources...” (Radaelli 2012: 2). The various EU initiatives can impact on a number of domestic domains. These three domains of change include (Figure 1):



(Sources: Börzel and Risse 2003; Lenschow 2004)

The Europeanization literature has also outlined a measure for change regarding the Europeanization process. Börzel (2005: 58) terms this the “outcomes of domestic change”. The five degrees of domestic change are inertia, retrenchment, absorption, accommodation and transformation (Börzel 2005). Inertia occurs when there’s an absence of change. This absence of change is not due to a ‘goodness of fit’ between domestic and EU proposals but rather the resistance of the Member State (Börzel 2005). However, resistance can also be sustained for a period of time particularly where EU legislation is concerned (Börzel 2005) (Quaglia *et al.* 2007). Retrenchment “involves the empowering of a coalition of domestic actors who oppose EU-inspired changes” (Quaglia *et al.* 2007) and can even serve to increase the ‘misfit’ between national and EU requirements (Börzel 2005). Absorption refers to a level of low change as Member States are able to “incorporate European requirements into their domestic institutions and policies without substantial modifications of existing structures and the logic of political behaviour” (Börzel 2005). Accommodation represents a moderate level of change (Börzel 2005) as Member States do not have to change core domestic features but rather adapt these existing domestic features to meet EU requirements (Börzel 2005). Finally, transformation represents the strongest level of change. Transformation requires Member States to conduct a major adjustment of domestic features, “member states replace existing policies, processes, and institutions by new, substantially different ones, or alter existing ones to the extent that their core features and/or the underlying collective understandings are fundamentally changed” (Börzel 2005).

3.3 Europeanisation as an acknowledged concept

While Europeanization is understood to mean different things to different authors and has been used in different ways, it is now an acknowledged concept for political scientists in order to analyse the impact of the EU. In a recent study Radaelli (2012: 1) asserts that “the field of Europeanization is well established in political science and more generally in the social sciences”. Europeanization provides a way of assessing the impact of the EU. As a result, Europeanization is used as the theoretical framework to frame and guide the research of the paper and ultimately be used to answer the research question posed by this paper. While the EU’s remit in the area of equal pay includes legislative as well as non-legislative initiatives such as gender mainstreaming and new modes of governance such as the European Employment Strategy this paper is focused on the impact of hard law initiatives. The paper assesses the impact of the EU on the area of equal pay in Ireland by focusing on Article 119 EEC (now Article 157 TFEU) and the 1975 Equal Pay Directive (superseded by the Recast Directive 2006/54). As this paper is investigating the legislative impact of the EU at Member State level Europeanization is understood as a process of “change affecting domestic institutions, politics and public policy” (Radaelli 2012: 1). An appropriate definition for the research of this paper relates to the idea that domestic changes can come about as “...member states adapt their processes, policies, and institutions to new practices, norms and rules, and procedures that emanate from the emergence of a European system of governance” (Börzel and Risse 2000: 6). This definition was chosen as it refers to the process of EU policymaking at a macro-level and then allows for the analysis of the impact of the EU at a domestic level in Ireland in the area of equal pay.

A number of academics such as Moumoutzis (2011), Radaelli and Pasquier (2008) and Exadaktylos and Radaelli (2009) recommend a focus on the domestic level in order to be able to gauge the impact of the EU. The bottom-up research design approach to Europeanization asserts that one needs to start at the domestic level at a particular point of time and then assess whether the EU has impacted at domestic level (Vink and Graziano 2008). A bottom-up research design approach to Europeanization requires a study of the pre-existing situation in a Member State in order to assess the impact of the EU (Rees and Connaughton 2009). As a result, the following analysis begins with an assessment of the situation in Ireland beginning in 1970 as this was when the Commission on the Status of Women was established in Ireland. This Commission marked a key moment in the area of equal pay in Ireland. This is followed by an outline of the EU initiatives relevant for the research of this paper that came into play in Ireland following accession to the European Economic Community in 1973. Further to this, the paper employs the three-step approach to analysing Europeanization (as outlined by Risse *et al.* 2001) in order to assess the impact of the EU through these legislative means. This will involve a discussion of the level of 'misfit' between the EU and the Member State in the area of equal pay and as a result a discussion of the level of adaptational pressure the EU applied to Ireland. It will also involve a discussion of the mediating factors at Irish level which filtered the impact the EU had at domestic level. Finally, the paper assesses the impact of the EU and the level of this change in the area of equal pay in Ireland.

4. Equal Pay in Ireland – a case study in Europeanisation

4.1. Beginnings of Change

As outlined earlier a focus on the domestic level is a crucial aspect of assessing the impact of the EU. This section outlines the situation at Member State level in Ireland prior to accession to the EEC in 1973. During the early 1970s in Ireland the beginnings of change in relation to women’s rights and equal pay were evident due to the pressure that was being applied from the 'bottom-up'. This was

largely due to the rising prominence of the Irish women's movement. This movement was fuelled by the expanding Irish economy in the 1960s which provided increased opportunities for women as well as the transformation of the educational system after 1965 and the greater exposure of Ireland to secular values and cultures (Finnegan and Wiles 2005). Ultimately a Commission on the Status of Women was set up in 1970, mainly as a result of campaigning by women's groups and as a response to the UN decade for women (Considine and Dukelow 2009) (Laffan 1991). The Commission and its subsequent report proved to be a crucial turning point for Irish social policy and policy regarding women's rights. It became

the first major public document that catalogued the numerous anomalies [and] inequities [...]. The report highlighted the level of restrictions on women's employment, inequities in the tax system, inequalities before the law and unequal pay (Laffan 1991: 244).

The 1970 Commission recommended the introduction of legislation in Ireland that would enshrine the principles of equal pay for work of equal value with the Irish government accepting this recommendation (Galligan 1998).

Thus, by the early 1970s the Irish Government had begun to take "the first tentative steps to look at the role of women in society and particularly their participation in the labour market" (Hart 1999: 226). However, the acceptance by the Irish government of the recommendation by the 1970 Commission did not lead to legislation. The Fianna Fáil government at the time prior to Ireland's membership preferred the idea of introducing equal pay due to negotiated agreement rather than binding legislation (Galligan 1998: 76). Many of the recommendations of the 1970 Commission were incorporated into the 1972 National Wage Agreement (Galligan 1998) but binding legislation in the area of equal pay proved elusive. Therefore, it is evident that pressure applied by domestic groups in Ireland meant that the issue of inequities experienced by women, including in the area of equal pay, had been put on the political agenda in Ireland. However, it is also apparent that Ireland and Irish governments at the time were still only debating equal pay. For example, the Interim Report on Equal Pay of the Commission on the Status of Women 1972 stated that the claim for equal pay, particularly in the Civil Service, had been put on the shelf since the Commission was formed (Ownes 1972: 107). Hence, the adaptational pressure applied from the 'bottom-up' was limited in its effectiveness in achieving actual binding legislation as regards equal pay in Ireland. In 1973 with Ireland's accession to the EEC the European arena came into play in the area of equal pay in Ireland.

4.2 The European Union and Equal Pay

The 'bottom-up' adaptational pressure that was evident in Ireland in the 1970s as discussed previously coincided with Ireland's entry to the EEC. The EU ultimately became an important source of external pressure on governments in Ireland (Laffan 1991) due to EU initiatives in the area of equal pay such as Article 119 EEC (now Article 157 TFEU), rulings from the European Court of Justice, for example the *Defrenne* Case (case 43/75), and the Equal Pay Directive of 1975 (superseded by the Recast Directive 2006/54). The EU's commitment to tackling gender discrimination firstly appeared in the 1957 Treaty of Rome which established the EEC. Equal pay in the EU was based on Article 119 EEC (now Article 157 TFEU) which promoted the principle that each Member State should ensure men and women receive equal pay for equal work. Article 119 EEC stated that:

Each Member State shall during the first stage ensure and subsequently maintain the application of the principle that men and women should receive equal pay for equal work.

For the purpose of this Article, "pay" means the ordinary basic minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives, directly or indirectly, in respect of his employment from his employer.

Equal pay without discrimination based on sex means:

(a) that pay for the same work at piece rates shall be calculated on the basis of the same unit of measurement;

(b) that pay for work at time rates shall be the same for the same job.

The equal pay provision was introduced due to the French government's concerns about competitive advantage. France were the only one of the six original Member States to have introduced equal pay legislation and thus feared a competitive disadvantage (Martinsen 2007). Article 119 EEC was to be implemented by Member States by the 31st December 1962, however this did not occur (Martinsen 2007).

As a result, the provisions for equal pay in Article 119 EEC remained a declaration of intent until the 1970s when a number of cases were taken to the European Court of Justice (ECJ) and a new Directive was introduced in 1975 (Martinsen 2007). The key turning point in achieving equal pay was in the 1970's due to the *Defrenne* case (Case 43/75) as this was the first equal opportunities case taken to the ECJ (Rees 1998). *Defrenne*, an air hostess with the Belgian airline Sabena, claimed that she was being paid less than a man whose job title was different but the work was the same (Rees 1998). The *Defrenne* case showed the importance of the European Court of Justice and the supremacy of EU law in assuring that Member States comply with legislation from a 'top-down' level. The European Court of Justice queried two important questions regarding Article 119 EEC, (1) if Article 119 introduced the principle of equal pay directly into national law, and (2) whether Article 119 had become applicable in the internal policies of the Member States by virtue of the Treaty or had to be applied first by national authorities (Martinsen 2007: 549). The European Court of Justice ruling in the *Defrenne* case established the "...legitimation of women's right to equal pay and equal treatment and acceptance that dispositions of the ECJ must be respected by national courts (Article 189)" (Gardiner 1999: 41). There was a considerable impact due to this questioning by the ECJ as, "it could place all women in the Community in a position to claim equal pay retrospectively since the date of applicability..." (Martinsen 2007: 549). The ECJ established three principles due to this case that would form the basis of gender equality policy in the European Union for instance the "...legitimation of women's right to equal pay and equal treatment and acceptance that dispositions of the ECJ must be respected by national courts" (Gardiner 1999: 41).

Further to cases taken to the ECJ in 1975 the Approximation of the Laws of the Member States Relating to the Application of the Principle of Equal Pay for Men and Women (Council Directive 75/117/EEC) was introduced. This directive meant that equal pay for equal work was firmly established in EU legislation. The 1975 Directive on Equal Pay (superseded by the Recast Directive 2006/54) asserted the values expressed in Article 119 EEC but expanded upon it and specified that women and men should receive equal pay for equal work (Caporaso and Jupille 2001) (Hantrais 2000). Article 1 of the 1975 Directive stated that

The principle of equal pay for men and women outlined in Article 119 of the Treaty, hereinafter called "principle of equal pay", means, for the same work or for work to which equal value is attributed, the elimination of all discrimination on grounds of sex with regard to all aspects and conditions of remuneration.

The 1975 Directive was introduced in order to harmonise laws as Article 119 EEC had not been implemented (Ellis 1998). During the early 1970s the European Parliament stated that Article 119 EEC had been in fact legally binding for a number of years but had failed in a large part due to ineffective monitoring (Ellis 1998). Hence, the 1975 Directive was seen “...as providing a valuable additional means of control by the Commission over Member States in relation to equal pay” (Ellis 1998: 147). Through the above EU Treaty and legislation and rulings of the European court of Justice the EU applied 'top-down' pressure on Member States. Due to the supremacy of EU law these initiatives were intended to deliver a 'shock' to national policy systems that would result in change at Member State level if their policies were not in line with EU policies on equal pay. The following sections assess this change in relation to Ireland.

4.2. Ireland: 'Goodness of Fit' and Adaptational Pressure

As previously outlined in order to be able to gauge the impact of the EU through legislative means, one must first establish the 'goodness of fit' between the EU and the domestic level and then discuss the resulting level of adaptational pressure applied to the Member State (Risse *et al.* 2001). For example, prior to EEC membership a marriage bar was in place in Ireland which meant a woman had to leave paid employment in the public sector once she got married (Hart 1999). There was a low female participation rate in the labour market with women who did work typically receiving low pay and those women who did end up in senior positions were inevitably single (Hart 1999: 226). It is apparent as a result that prior to the time of entry to the EEC by Ireland policies that discriminated against women were legitimated in Irish law, public policy and society. Therefore, it would seem that a 'misfit' is evident between legislation and public policy in Ireland and the principle of gender equality emanating from the EU. Caporaso and Jupille (2001: 46) outline a number of criteria for establishing whether or not a Member State had a good level of 'fit' with rules and norms emanating from the EU. First, they argue that 'goodness of fit' relates to the extent that pay equality in the Member State satisfies the expectations or requirements of European policy and law (Caporaso and Jupille 2001). As outlined by the Report of the Commission on the Status of Women set up in Ireland in 1970 Ireland traditionally had inequities and inequalities as regards equal pay between men and women (Laffan 1991). Therefore, “on the hypothesis that higher disparities indicate poor fit between the aspirations of EU equality policies and domestic conditions” (Caporaso and Jupille 2001: 44) we would expect the EU to have a high degree of adaptational pressure on Ireland.

Secondly, Caporaso and Jupille (2001: 26) argue that a Member State like Ireland will also experience a 'misfit' in the area of equal pay as Ireland was not part of the original group of Member States that participated in the shaping of Article 119 EEC (now Article 157 TFEU) upon which the right to equal pay in the European Union hinges upon. Therefore, Ireland had not 'uploaded' its policies and preferences to EU level in order to lessen the degree of 'misfit' between EU and Irish policies. Therefore, once again we would expect a high level of adaptational pressure on Ireland by the EU. Thirdly, Caporaso and Jupille (2001) state that if a Member State initially tends to resist the gender equality provisions being put forward at European level, it represents a level of 'misfit' for the Member State. The Irish government did in fact initially resist the implementation of the EU Equal Pay Directive of 1975 so once again we would expect a high level of adaptational pressure on Ireland to change its laws and policies regarding equal pay. Thus, as a result of the above 'misfits' between domestic and European conditions we would expect the EU to have a strong impact on Irish legislation and individual rights regarding equal pay in Ireland.

4.3. Ireland: Mediating Factors

However, any impact of the EU on the area of equal pay in Ireland will be dependent on the mediating factors that exist at domestic level (Risse *et al.* 2001). For instance, Risse *et al.* (2001:1) argue that “national features continue to play a role in shaping outcomes” and that EU level initiatives such as legislation “must pass through and interact with facilitating and or obstructive factors specific to each country” (Risse *et al.* 2001: 2). As the focus of this paper is looking at the impact of the EU on an area of gender equality, in this case equal pay legislation, the mediating factors that are important to understand are “the underpinnings of Irish society...the role of culture, values and attitudes in determining the degree to which Europeanization impacts on Ireland” (Rees *et al.* 2009: 34). For example, from the founding of the Irish Free State in 1922,

legislation had included restrictions on the freedom of women in respect of reproductive rights, marriage, family law, employment and welfare. These policies were supported by the permeation of society by sexist attitudes and paternal religious authority, grounded in a particular image of women and a paternal view of society (Finnegan and Wiles 2005: 1).

A particular view of the role of women was also enshrined in the 1937 Constitution (Articles 41.2: 2.1 and 2.2). It recognised the role of women in the home and it stated that “the state shall therefore endeavour to assume that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home” (Constitution of Ireland 1937). This stereotyped role of women was still evident by the time of Ireland’s entry to the EEC in 1973. For example, a Report of the Commission on the Status of Women in 1972 outlined that there continued to be a view “that a women’s role must be predominantly home centred while a man’s life will be predominantly centred on employment” (Commission on the Status of Women 1972). Laffan (1991) argues that this particular view of women and their role in society stemmed from a Catholic and authoritarian culture. The Catholic Church hugely influenced attitudes at the time on social issues and exerted a very strong influence on policymaking in Ireland with much Irish public policy and legislation reflecting the ethos of the Catholic Church (Rees *et al.* 2009). The Catholic Church further sought to reinforce the traditional role that women held in society (Finnegan and Wiles 2005). Therefore, there was a certain view of the role of women in Irish society that the Europeanization process would have to engage with. This would ultimately have an effect on the potential impact of the EU.

4.3 Impact of the EU on Irish Legislation and Individual Rights

4.3.1 The Irish 1974 Anti-Discrimination Pay Act

As previously stated due to the level of 'misfit' between Irish and EU policies regarding equal pay we would expect the EU to indeed apply 'top-down' adaptational pressure on Ireland that would lead to a 'shock' in the Irish national policy system. In Ireland the EU did provide this 'shock' that resulted in new legislation. 'Top-down' Europeanization is evident in Ireland due to the 1975 Equal Pay Directive at EU level. In order to bring Irish legislation into line with this Directive the Irish parliament passed the Irish Anti-Discrimination Pay Act in 1974. The Irish Anti-Discrimination Act 1974 stated that men and women should receive equal treatment in regard to pay for like work (Laffan 1991: 245). It was due to come into effect on the 31st December 1974 in order to meet EU requirements (Galligan 1998). However, due to the economic crisis at the time in Ireland employer organisations lobbied the Irish government to defer the implementation of full equal pay legislation. Their argument centred around the cost of providing equal pay in private sector companies (Galligan 1998). As well, at government level, there were concerns that providing equal pay in the public sector would be too costly (Galligan 1998). Hence, the Irish government ultimately sought to implement an amendment which allowed for exceptions to the principle of equal pay if the viability of an enterprise was to be

placed in jeopardy by legislation (Laffan 1991: 245). As a result, the Irish government sought a partial derogation from the European Commission as regards the Equal Pay Directive of 1975.

4.3.2 The Combined Forces of Domestic Groups and the European Commission

However, the EU provided a new supranational arena where domestic groups advocating for equal pay in Ireland could take the issue of derogation (Laffan 1991) (Hart 1999). The Commissioner for Social Affairs at the time, Patrick Hillery (who was a government minister in Ireland previously to his role as Commissioner and would later go onto become the President of Ireland) sent a group to Ireland to look at the case for derogation. The group met interested parties and ultimately in their report recommended the refusal of the Irish derogation (Galligan 1998). The Commissioner therefore ordered the Irish government to give immediate effect to equal pay legislation (Galligan 1998: 79). As a result of this adaptational pressure from the EU level the 1974 Anti-Discrimination Pay Act came into force in 1976 in Ireland (Laffan 1991). This law meant that in Irish law “women and men were deemed to be entitled to equal pay for 'like work' including work of 'equal value'” (Barry 2006: 20). While it is evident that Irish civil society groups laid the basis for discussions on the provision of equal pay in Ireland it was ultimately 'top-down' pressure from the European Commission that led to the enactment of legislation in Ireland which in turn gave Irish women the right to equal pay. The European Commission and legislation proposed at EU level ultimately led to the enactment of binding legislation that proved elusive in the Irish context. In doing so it provided Irish women with extra social rights that they otherwise may not have had for a number of years due to the prevailing economic crisis in Ireland throughout the 1980s which formed the basis of any case against introducing equal pay as previously outlined.

The EU also provided an arena for domestic groups such as women's groups to become more influential in national policymaking as they could take their issues to the European level if the Irish government failed to act. The combined pressure of domestic groups pushing the agenda at domestic level and the EU providing the legal imperative to implement legislation led to ground-breaking legislation in Ireland that could have continued to be delayed for longer (Hart 1999). This was highlighted in a Report on Proposals Relating to Equality of Opportunity where it stated that the pressure from the European Commission on the Irish government to enact legislation led “to changes in employment practices which might otherwise have taken decades to achieve” (Joint Committee on the Secondary Legislation of the European Communities 1984: 123). Thus, the 'top-down' adaptational pressure from the EU led to legislation in Ireland upon which women could rely on to ensure their right to equal pay and this right would lack effect only for EU law (Caporaso and Juplille 2001: 63). The EU ultimately challenged national law and policy in Ireland which led to a significant change in the area of equal pay legislation and equal pay rights in Ireland. Due to the ground work done on this issue at domestic level by domestic groups and the pressure the EU applied it led to a context which supported change and a transformation of Irish legislation in the area of equal pay. As Galligan points out “in the end, the intervention of the EU forced the Hand of the Irish government. Yet, without the sustained commitment of Irish women activists, equal pay would never have become a political issue” (Galligan 1998: 79). It is also evident that the EU gave these domestic groups an arena to gain influence and thus become more influential in domestic policymaking. Therefore, as regards the levels of change outlined by the Europeanization literature discussed earlier it is evident the EU led to a transformation in Ireland, as there is a high degree of change evident which led to the enactment of new legislation in Ireland; the Irish Anti-Discrimination Pay Act 1974 which ensured the right to equal pay for Irish women. As a result, as expected due to the lack of 'goodness of fit' adaptational pressure from the 'top-down' led to the Europeanization of the area of equal pay in Ireland.

8.3 Equal Pay Legislation in Ireland

The 1974 Anti-Discrimination Pay Act in Ireland ensured Irish women the right to receive equal treatment in regard to pay for like work (Laffan 1991: 245). The Irish Anti-Discrimination Pay Act of 1974 stated in section 2.1 that

subject to this Act, it shall be a term of the contract under which a woman is employed in any place that she shall be entitled to the same rate of remuneration as a man who is employed in that place by the same employer (or by an associated employer if the employees, whether generally or of a particular class, of both employers have the same terms and conditions of employment), if both are employed on like work.

This was the first piece of Irish legislation that ensured this right to equal pay for Irish women. It is the founding document of women's rights in the area of equal pay in Ireland. The principles outlined in the Pay Act of 1974 have been reiterated in later acts and developed upon in the context of discriminatory grounds for taking equal pay cases, for example the Equality Employment Acts of 1998 and 2004. The Employment Equality Acts of 1998 and 2004 sought to implement the provisions of the Gender Equal Treatment Framework, Framework Employment Directive and Race Directive (Equality Authority 2013: 1)¹. The Employment Equality Acts provide

for equal pay for like work. Like work is defined as work that is the same, similar or work of equal value. It is a term of everyone's contract of employment that there is an entitlement to equal pay (Equality Authority 2013: 8).

Furthermore, equal pay claims can be taken on a number of discriminatory grounds (Equality Authority 2013). For instance, discrimination is prohibited on the following grounds:

- The gender ground: A man, a woman or a transsexual person (specific protection is provided for pregnant employees or in relation to maternity leave);
- The marital status ground: Single, married, separated, divorced or widowed;
- The family status ground: A parent of a person under 18 years or the resident primary carer or a parent of a person with a disability;
- The sexual orientation ground: Gay, lesbian, bisexual or heterosexual;
- The religion ground: Different religious belief, background, outlook or none;
- The age ground: This applies to all ages above the maximum age at which a person is statutorily obliged to attend school;
- The disability ground: This is broadly defined including people with physical, intellectual, learning, cognitive or emotional disabilities and a range of medical conditions;
- The race ground: A particular race, skin colour, nationality or ethnic origin;
- The Traveller community ground: People who are commonly called Travellers, who are identified both by Travellers and others as people with a shared history, culture and traditions, identified historically as a nomadic way of life on the island of Ireland (Equality Authority 2013: 4).

¹ Council Directive 2002/73/EC of 23 September 2002 amending Council Directive 76/207/EC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion and working conditions [2002] OJ L2 69/15, Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation

[2000] OJ L303/16 and Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin [2000] OJ L180/22.

As a result, the right to equal pay for women and men is firmly established in Irish legislation since the introduction of the Anti-Discrimination Pay Act of 1974 and the Employment Equality Acts that followed. It is important to note that EU legislative initiatives have been the source of pressure for ensuring the principle of equal pay is enshrined in Irish law.

4.4 Equal Pay in Ireland – a success?

Mazey (1998: 132) argues that gender anti-discrimination laws in the area of equal pay have “undoubtedly benefited working women, by providing them with a legal means of redress in cases of sex discrimination” (Mazey 1998: 132). Indeed the gender pay gap in Ireland has narrowed over time. For instance, in 1973 a woman earned 47% of a man’s earnings while in 2013 a woman earns 86% (Irish Presidency 2013). Data from the Living in Ireland Surveys from 1987 to 2000 revealed that the pay gap was 19.9% in 1987, by 1994 it was 17.2%, the pay gap in 1997 was 15% and in 2000 it was 14.7% (Russell and Ganon 2002: 64/5). However, it is apparent that the pace of reduction has slowed with only a decrease of 0.3% noticeable between 1997 and 2000 (Russell and Ganon 2002). In 2013 the gender pay gap stands at 13.9% (National Women’s Council of Ireland 2013) further signifying that the rate of reduction has proved to be slow in Ireland in recent years. Hence, a report from the Advisory Committee on Equal Opportunities for Women and Men stated that while legislation is a necessary aspect in tackling the gender pay gap, the legislation has its limitations. For example,

a number of factors suggest that it has had a limited effect at the aggregate level. Firstly, neither the original anti-discrimination legislation nor the new Employment Equality Act refer to a job classification or evaluation system, which limits the extent to which different jobs can be compared on the basis of ‘equal value’. Secondly, as comparisons are restricted to those working for the same or associated employer, the capacity of the legislation to reduce wage differentials that arise through segregation is restricted and the economy-wide effects of court rulings are small. Thirdly, complaint-driven approaches, like that specified by Irish legislation, appear to be less effective than those where class actions are taken or where government inspectorate pro-actively ensures compliance (Russell and Gannon 2002: 77).

Furthermore, legislation has failed to address discretionary or structural reasons for the gender pay gap which impact disproportionately on women (Advisory Committee on Equal Opportunities for Women and Men 2009: 6). Discretionary or structural reasons for a gender pay gap include the undervaluing of women’s work as jobs requiring similar skills, qualifications, or experience tend to be poorly paid and undervalued when they are dominated by women rather than men (Advisory Committee on Equal Opportunities for Women and Men 2009: 6). Also, the labour market tends to be characterised by sectors of activity and/or occupations of female and male dominance. Generally, female dominated jobs tend to be characterised by low pay (Advisory Committee on Equal Opportunities for Women and Men 2009: 7). Women also tend to have more frequent and longer career breaks and the task of looking after children or dependent family members is largely borne by women (Advisory Committee on Equal Opportunities for Women and Men 2009: 7).

A proportion of the wage gap can also be attributed to discrimination. McGuinness *et al.* (2009: 8) point out that “a principal source of discrimination is likely to stem from male domination in the hiring process and a high perceived cost of employing females due to their greater tendency to exit from the labour market for family reasons” and that even when women do achieve say promotion “discrimination may play role on the salary level to which females ascend following promotion, and an upper limit to the level of wage progression may also exist” (McGuinness *et al.* 2009: 8). That is, that a glass ceiling remains in place for women with discrimination playing a key role (McGuinness *et al.* 2009: 8). Further, McGuinness *et al.* (2009: 9) highlight that the gender wage gap does seem to be

declining, for example due to increasing college completion and employment rates amongst women as well as the impact of equality legislation. However, the unexplained aspect of the gender wage gap, which is generally understood to be an indicator of discrimination, has remained constant (McGuinness *et al.* 2009). Thus, confirming the limited effectiveness of equal pay legislation in general in tackling issues such as structural reasons for the pay gap, discrimination or those mediating factors such as the values and beliefs held in a Member State that were outlined in section seven.

5. Conclusions

This paper sought to answer the question: what has been the impact of the EU on domestic legislation and individual rights as regards equal pay in Ireland? From the above analysis it is evident that the EU has had a considerable impact in Ireland in the area of equal pay. While much work was done by domestic groups in ensuring the issue of equal pay gained prominence on the political agenda in Ireland, a commitment to binding legislation proved elusive in Ireland. This changed with Ireland's accession to the EEC in 1973. As a result of accession Ireland had to bring its policies regarding women in line with those emanating from the EU level, first and foremost in the area of equal pay. The EU applied 'top-down' adaptational pressure that ensured the Irish government enacted Irish legislation (Anti-Discrimination Pay Act 1974). This gave Irish women the right to equal pay, a right which they did not have before accession to the EEC. Hence, Ireland did "adapt their processes, policies, and institutions to new practices, norms and rules, and procedures that emanate from the emergence of a European system of governance" (Börzel and Risse 2000: 6) indicating that the Europeanization of the area of equal pay in Ireland occurred. However, it is important to note that pressure applied by domestic groups from the 'bottom-up' was also an important element in ensuring the Irish government enacted equal pay legislation. Equal pay legislation in Ireland has ensured Irish women's right to equal pay yet a substantial pay gap remains in Ireland. In general, equal pay legislation has proved to be beneficial in lowering the wage gap but has not been successful in eliminating it.

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