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Equality mainstreaming in EU law: a pitch for a transformative conception of equality

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- 1. Equality as a multi-dimensional concept**
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Equality as a multi-dimensional concept

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Spectrum of equality concepts in EU law

Formal equality: treating likes alike

Substantive equality:

- equality of opportunity
- Equality of results
- Special measures
- Asymmetric

EU equality law reflects a large part of this spectrum, but the focus is mostly on formal equality.

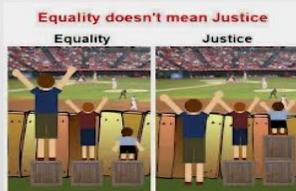
CEDAW: a human rights perspective

(Gen. Rec. 25, par. 6-7)



Formal equality

“Firstly, States parties’ obligation is to ensure that there is **no direct or indirect discrimination against women** in their laws and that women are protected against discrimination — committed by public authorities, the judiciary, organizations, enterprises or private individuals — in the public as well as the private spheres by competent tribunals as well as sanctions and other remedies.



Substantive equality

Secondly, States parties’ obligation is **to improve the de facto position of women** through concrete and effective policies and programmes.



Transformative equality

Thirdly, States parties’ obligation is to **address prevailing gender relations and the persistence of gender-based stereotypes** that affect women not only through individual acts by individuals but also in law, and legal and societal structures and institutions”



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Mainstreaming

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History of mainstreaming

- Concepts came from the international level – focus on gender: equality must be taken serious in the mainstream, not just a peripheral subject.
- Twin-track approach to (gender) equality:
 - 1. Equality legislation and positive action
 - 2. Gender mainstreaming
- Transformative potential: changing the very structure of law and policy (going beyond individual rights and positive action)

Definitions of Gender mainstreaming

ECOSOC 1997:

“The process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels. It is a strategy for making women’s as well as men’s concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated. **The ultimate goal is to achieve gender equality.**”



CoE 1998: “The (re)organisation, improvement, development and evaluation of policy processes, so that a **gender equality perspective is incorporated in all policies at all levels and at all stages**, by the actors normally involved in policy-making.”

EU Gender Equality Strategy 2020-2025: ambitious language

‘The core challenges affecting the EU today – including the green and digital transitions and demographic change – all have a gender dimension. The inclusion of a gender perspective in all EU policies and processes is essential to reach the goal of gender equality.

Gender mainstreaming ensures that policies and programmes maximise the potential of all – women and men, girls and boys, in all their diversity. The aim is to redistribute power, influence and resources in a fair and gender-equal way, tackling inequality, promoting fairness, and creating opportunity.

The Commission will integrate a gender perspective in all major Commission initiatives during the current mandate, facilitated by the appointment of the first Commissioner for Equality, as a stand-alone portfolio, and by creating a Task Force for Equality composed of representatives of all Commission services and of the European External Action Service. The Task Force will ensure the implementation of equality mainstreaming, including gender equality, at operational and technical level.

The **intersectionality** of gender with other grounds of discrimination will be addressed across EU policies. Women are a heterogeneous group and may face intersectional discrimination based on several personal characteristics’



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Critical notes on equality mainstreaming

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Selection of critiques found in scholarship:

- Equality mainstreaming still largely absent from key policy areas
- EU gender mainstreaming much stronger in external than in internal action
- Mainstreaming often treated as a procedural (tick the box) rather than substantive requirement
- Mainstreaming beyond gender: difficulties in taking a holistic perspective (all grounds of discrimination)
- Equality mainstreaming losing out against other priorities particular when these are constructed as 'crises' (such as migration and climate change- see Gill Allwood 2020)
- Most fundamentally: "mainstreaming" should be understood as a project for seizing institutional power that is profoundly ambiguous in its effects" (eg Koskenniemi 2010; Charlesworth 2005)



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Conclusions for our building blocks?

Thank you!

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