The Europeanization of gender equality

A study on EU influence on Swedish gender equality legislation

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Abstract
Sweden has since the membership of the European Union established a new Discrimination act and this thesis aim is to discuss if the EU could be a factor that influenced Sweden to that change. This is done through a discussion of how the EU is mentioned in the preparatory works. Preparatory works are used by the Swedish government in policy making before deciding on a new law and is to give a better understanding to the theoretical background and how the policy-making process deals with the effects of the EU policy at national level. To help explain how the EU could be an influential factor the theory of Europeanization and State-feminist theory are applied. These theories are also discussed further on the role norm entrepreneurs’ play and how they use the EU as an opportunity structure. Through the theory of Europeanization it is explained how the EU directives have been implemented without any adoptational problems and with Sweden meeting the goals of the directives, national legislation has been developed further. Through the governmental bills, signs show that the EU can be a factor of influence in national legislation in Sweden. It has not, however, been stated that the changes of the acts to the current Discrimination act is done by effects of the European Union.

Keyword: EU, Europeanization, preparatory work, Discrimination act, norm entrepreneur
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2 Introduction

In January 2009, Sweden established a new Discrimination act which replaces the Equal Opportunities Act and six other anti-discrimination acts. The new act combats discrimination on grounds of gender, transgender identity or expression, ethnic origin, religion or other belief, disability, sexual orientation or age. It also has two additional grounds for discrimination: transgender identity or expression, and discrimination on grounds of age. The new discrimination act is formulated to be gender neutral and the old Equal opportunity act had legislation and goals to deal with the gender power structure that exists today. With a gender neutral act it is important to discuss if Sweden legislatively could go backwards in its development on gender equality. In international comparison, Sweden is seen as a pioneer in gender equality. However, since the membership of the European Union (EU), Sweden’s legislation concerning gender equality has taken a new turn from being labour oriented to counting gender discrimination as a right equal to other rights. Sweden has since the EU-membership changed its Equal opportunities act to a new coherent act on Discrimination and this thesis intend to discuss if the EU could be a factor that influenced Sweden to that change. To discuss how the EU might have affected Swedish legislation this thesis looks to how the EU is discussed in the preparatory works. Preparatory works are used by the Swedish government in policy making before deciding on a new law. To help explain how the EU could be an influential factor the theory of Europeanization and State-feminist theory are applied. These theories are also discussed further on what role norm entrepreneurs’ play and how they use the EU as an opportunity structure.

2.1 Problem formulation

Sweden’s new coherent act came in to force in 2009 and replaces the Equal Opportunities Act and six other anti-discrimination laws. The new act combats discrimination on grounds of gender, transgender identity or expression, ethnic origin, religion or other belief, disability, sexual orientation or age. It also has two additional grounds for discrimination: transgender identity or expression, and discrimination on grounds of age. With the new law, a new agency is also created, the Office of the Ombudsman against Discrimination, which replaces the former Office of the Equal Opportunities Ombudsman and three others. The enforcement of this act terminates the Equal Opportunities Act and its legislation on labour law. The laws on gender equality are in the new act gender neutral, in comparison to the old Act that worked to strengthen women’s position on the labour market. Much discrimination results from traditional, unquestioning ways in which society is ordered and makes it difficult to identify and define discrimination. The old Equal opportunity act had a legislation and goal to deal with the gender power structure that exists today. With a gender neutral act it can be
discussed if Sweden legislatively could go backwards in development. Ellis (2005) discusses how it is “not sufficient for the achievement of equality simply to require the same conditions for all people... because in practice some sections of the community have been historically so disadvantaged as to be unable to compete in the race to the first place”.¹ In 1994 Swedish Parliament formally approved the membership of the EU and as a member state it is now binding to follow the EU´s common goal set out in the directives. In studying the traditional impact of the EU, the question of most interest for research is whether the increasing influence of the EU eventually might lead to a loss of national particularity. And for Sweden who often is seen, in an international comparison, as a pioneer in gender equality, maybe the loss of national particularity could be in its leading role within gender equality.

3 Method
The sociologic method used in this thesis is interdisciplinary in studying law and legal phenomena and discussing theories from social science. A quantitative legal dogmatic method will be used to address the preparatory works and if there are signs of if the EU might have been influenced Sweden legislatively. There is also a chapter presenting the governmental bills and how the EU has been discussed in that particular bill. These are in short, governmental bill: 1994:292, 1998:208, 2000:773, 2005:476 and 2008:567.² The preparatory works discussed in this thesis are of great importance in Swedish legislative preparations. In the chapter the EU is sometimes referred to as the EC because that was the correct name during the time of when it was presented. The legislation that is to be discussed is laid down in the preparatory works and later referred to in the finished governmental bill. The EU´s legal act, is structurally formulated different, it states the legal basis and purpose in the preamble of the directive. Moreover, this thesis will apply Tanja Olsson Blandy two step framework of State-feminism and Europeanization³, mainly to analyze if the membership has undergone legislative changes. The theory of Europeanization and State-feminist theory are applied to help explain the possible implementation and influence by the EU and further to discuss how and what factors that could affect a member state. The Europeanization theory is considered the main theory for how it analyzes of legal implementation and State-feminism is to explain the role of influential actors. A broad and general view of Europeanization research is on the effects the EU gets in response by member states from EU legislation. However, with the level of this thesis and the materials that has been accessed to, a limitation has been done to only discuss the top-down effect. The theory of Europeanization is used for its view on how the EU affects the member states, which is

¹ Ellis (2005)  
² Regeringskansliets rättsdatabaser  
³ Blandy (2010)
focusing on this thesis. The feminist legal theory is used to criticize the objectivity and the idea that everyone is equally treated before the law. The enforced Swedish Discrimination Act is gender neutral and it can be discussed if Sweden legislatively could go backwards in development. Ellis (2005) discusses how it is “not sufficient for the achievement of equality simply to require the same conditions for all people ... because in practice some sections of the community have been historically so disadvantaged as to be unable to compete in the race to the first place”.4

A tablet is constructed to make it easier for the reader to see the legislative changes over time through the four chosen examples. The first directive is the EU Directive 76/207/EEC of the principle of Equal treatment for men and women. Even though Directive 2002/73/EC is a more recent Directive 76/207/EEC is chosen because it was in force before Sweden became a member state. Another Directive that could have been included in this table would be Directive 76/117/EEC on equal pay, owing to how much of equality rights that has been in labour law. However this thesis is on equal treatment and Directive 76/207/EEC is therefore more suitable. During the 1970’s, the Swedish equality policies were work related so a comparison is made with Sweden’s first actual act on Equal opportunities (SFS 1991:433). The EUs so-called Recast Directive 2006/54/EC which consolidates the EU’s existing sex equality directives in to one single text to make gender equality law more accessible for a broader public.5 The last Directive in the tablet is the new Swedish Discrimination Act (SFS 2008:567) which ratifies the Equal treatment directive of the EU and the Directive establishing equal treatment between persons irrespective of racial or ethnic origin and Directive establishing equal treatment in employment and occupation.6 The results of this thesis research will be included together with the analysis, first discussing the possibility of the EU as an influential factor and later discussing domestic implementation in the case of Sweden through the theory of Europeanization and State-feminist theory. Any translations from Swedish that have had to be done in this thesis have been of this author.

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4 Ellis (2005)
5 The Recast Directive 2006/54/EC
6 Prop 2007/08:95
3.1 Purpose
This thesis purpose is to discuss the development of the Swedish Discrimination act of 2008 through presenting how the EU is mentioned in the preparatory works. The preparatory work is to give a better understanding to the theoretical background and how the policy-making process deals with the effects of the EU policy at national level.

Through this thesis the question is raised if signs can be seen that the membership of the EU has affected Sweden legislatively. This is because Sweden has since the membership changed its core act on gender equality to the now existing Discrimination act which also covers six other grounds of discrimination besides gender.

3.2 Research question
The subject of importance described in this thesis regards the European Union and the domestic implementation of its legislation. Sweden has well developed laws on gender equality and Sweden has since the EU-membership changed its Equal opportunities act to a new act called the Discrimination act which also covers six other grounds of discrimination and this thesis is to discuss how big of a role the EU has played in this change. This leads to the question asked in this thesis:

- Is the EU one of the factors who influenced Sweden in the implementation of the new Swedish Discrimination act which came in to force 2009?
- How can the legislative changes be explained through the theories of Europeanization and State-feminist?

3.3 Limitations
There have been many studies on what effects Sweden would experience by a membership in the European Union. Most studies are in labour law and how women’s rights have increased in the workplace. Parental leave and part-time work is also subject of discussion. However, this thesis will discuss the overall changes in Swedish legislation concerning gender equality and if the EU could be an influential factor of change of on the rights of Swedish women. Even though other actors, such as the UN, can be seen to be a factor infusing Swedish legislation concerning gender equality, the chapters presenting how the governmental bills and preparatory works are limited only discuss how the EU is mentioned and to discusses throughout the legal documents.

The purpose of this thesis is to discuss the overall legislative change and will therefore not further go into positive action or the concept of gender mainstreaming. Gender mainstreaming can be seen as to relate to the norm entrepreneurs mentioned in this thesis. However, norm entrepreneurs are in this thesis regarded as an individual able to affect Swedish legislation and gender mainstreaming is a
way of doing things. The equal opportunity ombudsman and labour organizations have both played a great role in developing equal rights and effecting Swedish legislation. However, with the purpose having an overall discussion, labour organizations will not be discussed further and the equal opportunity ombudsman is in this thesis considered a norm entrepreneur.

3.4 Definitions
The definitions in this chapter are a short summary of the most mentioned subjects in this thesis.

Europeanization as a research theory provides a useful framework in the understanding of the domestic effects by the European Union

Misfit is in thesis is used in the basic model of Europeanization. The degree of misfit determines the adaptional pressure on the member state and degree of domestic change.

Feminist legal theory place women and gender in focus, it evolve in response to correct a deficiency or add a dimension missing from previous thesis,

State-feminist research focus on the achievements of formal institutions tasked with gender equality facilitates an analysis of the actors involved in the policy process.

Preparatory work is legal public documents establishing the Swedish legislation that is to be decided on.

Norm entrepreneurs and equality gender agencies are in this thesis referred to as individuals, non-governmental organizations or international organizations which actively promote a norm and seek initial acceptance for the norm and use the EU as an opportunity structure.

Backlash is in this thesis used to present a theory on how Sweden legislatively could go backwards in development.

EFTA (European Free Trade Area) is an intergovernmental organization created in the 1950’s and it is set up for the promotion of free trade and economic integration to the benefit of its Member States. Today EFTA cooperates with EU. Before joining the EU, Sweden had been a member since 1960.  

7 EFTA history
4 Theories

This thesis uses a two-step framework of the theory of Europeanization and State-feminist theory. The Europeanization theory is considered the main theory for how it analyzes legal implementation and State-feminism is to explain the role of influential actors. These theories fit the discussion on whether the EU could be an influential factor through how the theory of Europeanization provides a useful framework in the understanding of the domestic effects by the EU, and State-feminist theory analyzes the actor’s involvement in policy process. In this thesis State-feminist theory discusses norm entrepreneurs as an actor that could use the EU window of opportunity.

The theory of Europeanization chosen for this thesis explains a general top-down effect of how EU policy making has an effect on domestic legislation and how the degree of adoption pressure can be explained through a degree on “misfit”. During the time of enforcement of the Swedish Discrimination Act 2008, the Swedish Equality act from 1991 was internationally seen as weak and Sweden’s legislation on gender equality was similar to the EU's, which meant that the degree of misfit between them was low. Tanja Olsson Blandy discusses in her book The Europeanisation of gender Equality – the unexpected case of Sweden the ongoing research on how norm entrepreneurs are able to use the EU as an opportunity structure. She seeks to answer these questions with the help of the theoretical framework provided by State-feminism and by Europeanization and is used in this thesis when discussing domestic implementation.

Neither state-feminism nor Europeanization are single theories and capable of standing on their own, however a combination of these two according to Blandy (2010), gives several analytical advantages. The research on Europeanization provides a useful framework in the understanding of the domestic effects by the European Union. “State-feminist research, with its focus on the achievements of formal institutions tasked with gender equality, facilitates an analysis of the actors involved in the policy process.” The goal is to use state feminist and non-feminist theories in order to further develop the advancements in both and should not be seen as constitution in a new area of scholarship. Similarly, Claudio Radaelli (2003) argues that Europeanization is not the solution or something that explains domestic change but best thought of as “something to be explained”. A traditional approach of dependent and independent variables can fail when analyzing the EU’s domestic impact and that is why Europeanization matters. “It is difficult, namely, to assess the contribution to domestic change of

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8 Blandy (2010)
9 Blandy (2010)
a single independent EU variable; as a consequence, the significance of independent variables risks being prejudged in studies of output.\textsuperscript{10}

The theory of Europeanization does not provide satisfactory guidance on how to conceptualize the link between changes in national output and practices of actors which the State-feminist does. The State-feminist theory offers a better understanding of the role played by domestic actors in the policy process and how to best use the activities of the equality agencies and norm entrepreneurs and link them with an eventual state response. Bandy (2010) developed the two step framework of State-feminism theory and Europeanization in order to analyze the possible link between the Equal opportunities ombudsman actions and strategies and the changes in the Gender equality act and in the working procedure of the Labour Court.\textsuperscript{11} This thesis mainly discuss if the membership has created legislative changes for women’s rights in Sweden in regarding to Bandy (2010) two step framework.

4.1 Europeanization

It is important to separate the study of European integration from Europeanization studies. Researches on European integration apply a bottom-up perspective. Studies on Europeanization investigate the outcome of when EU institutions and policy are in place in an attempt to uncover how policy develops at the EU level. The distinction between them can be seen as one works with the process leading up to the formatting of a certain policy (European integration), and the other; on the effect of the policy within the national area (Europeanization).\textsuperscript{12} The focus on Europeanization research is on the effects the EU gets in response from the EU policy by the member states. This is a broad and general view which most researchers share. Scholars that have focused on the effects of Europeanization at a national level are Haverland (1999) and Dnina (1999) who looked at domestic implementation of specific European regulations. Others have reviewed the impact within a particular country, such as Blumer and Peterson (1987) and Katzenstein (1997).\textsuperscript{13} The theory of Europeanization is used for its view on EU effects on the member states which is fitting for this thesis.

There are many ways of defining Europeanization. The most common concept is that it is always in some way referring to the domestic consequences of European integration. Brötzel and Risse (2003) argues that the effect Europeanization has on the member states can be seen in many different areas of the political system: “on policies (standards, instrument etc.); on politics (interest formation, public

\textsuperscript{10} Radaelli (2003)
\textsuperscript{11} Bandy (2010)
\textsuperscript{12} Radaelli (2003)
\textsuperscript{13} Green Cowels, Caporaso and Risse (2001)
discourse); and on the polity (political institutions, judicial structures, etc.).”\(^\text{14}\) The agenda used in Europeanization is sometime described as vague for its extensive target area and domestic effects can be analyzed from many different perspectives. It is also explained that the definition used must reflect the materials considered, as well as the research discipline in question. In Bundy’s thesis (2010) domestic effects are understood as the consequences which the EU has for domestic policy-making. In her book she analyzes both legislation (the polity) and public discourse (the politics). \(^\text{15}\) She writes:

*Europeanization consists of process 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 policies.*\(^\text{16}\)

The definition of Europeanization used by Blandy (2010) is originally from Randaelli (2006) book *Europeanization: solution or problem?* and as her, I find it particularly useful. It reveals three principal assertions suitable for this thesis. It is the process of policy-making, of how EU’s “ways of doing things” gets incorporated at national level that is most significant and also in center of discussion in this thesis. According to Radaelli (2006), Europeanization should not be seen as simply a domestic “reaction” or “response” to European politics\(^\text{17}\). Blandly (2010) further argues that European politics are part in a multi leveled system where it plays its own role and that the perspective is not entirely “bottom-up” or “top-down” and that it rather should be seen as an interactive process. Radaelli’s text on what Europeanization consists of can at first give the impression of a “top-down” perspective but Radaelli in matter of facts perceives the Europeanization process as interactive and that it begins and finishes at the domestic level. The gender-equality agenda in the EU is of a multi-leveled system where political actors are able to interconnect with each other and where substantial actors often are able to operate both at a national and supranational level. This leads to how the process of Europeanization can be seen as interactive by how domestic actors try to influence policy at EU level and consequently affecting the policy of their own national government in turn.\(^\text{18}\) Blandy further explains through Radaelli’s definition how the Europeanization cannot simply be defined as a “reaction” or “domestic adaption” to EU policies, but more how domestic actors find creative ways of using the EU as a “window of opportunity”\(^\text{19}\) for

\(^{14}\) Börzel and Risse (2003)
\(^{15}\) Blandy (2010)
\(^{16}\) Radaelli (2006) p. 59
\(^{17}\) Radaelli (2006)
\(^{18}\) Blandy (2010)
\(^{19}\) Blandy (2010)
accomplishing domestic change. The approach Blandy has taken in her thesis is that it is the process by which European politics is incorporated that is the critical part. This opens up a “window of opportunities” for domestic equality agency’s to use the EU in new creative ways.\textsuperscript{20} As previously mentioned the Europeanization process is interactive and focuses on the effects both of member states and at EU level but as a limitation a more basic model of Europeanization will be used in this thesis.

4.2 The basic model of Europeanization

Europeanization’s basic model continues on the assumption that the process of European integration does in general, affect domestic structure in the member states. However, a variety of factors may make the process inhibited or facilitated. The model consists of three steps,\textsuperscript{21} the first step is to identify what makes domestic adaptation necessary at EU level. The second step is to identify the degree of misfit. The degree of adaptational change or misfit between the Europeanization process and domestic structure determines the extent of how much the domestic institutions need to change in order to comply with EU rules. This means that where there is a misfit between the European Union and domestic levels, an adaptational pressure is generated for change at domestic level. Radaelli emphasizes that “a misfit, or incapability, between the EU and domestic practices is a necessary, but not sufficient, condition for change in response to Europeanization”.\textsuperscript{22} It is also necessary that the “various facilitating factors, institutions or actors respond to the additional pressures which the EU imposes”.\textsuperscript{23} The third final step is to analyses how certain actors and institutions respond to the adaptational pressure. A distinction is made here between formal institutions, informal institutions, and veto points.\textsuperscript{24} Informal structures can be political and organizational cultures which may affect whether actors feel that they can use adaptation pressures to pursue their interest.\textsuperscript{25} Multi veto points are a mediating factor and have the ability to hinder domestic change which can be in need when power is spread out and a wider variety of actors have a say in decision-making. The split between legislative and executive powers makes it more difficult to promote any particular response to EU actors’ federal and presidential system. Overall, domestic changes are dependent variables in this model.\textsuperscript{26}

\textsuperscript{20} Blandy (2010)
\textsuperscript{22} Cowles et al. (2001:6-7) in Blandy p. 32 (2010)
\textsuperscript{23} Cowles et al. (2001:6-7) in Blandy p. 32 (2010)
\textsuperscript{24} Caporaso (2008)
\textsuperscript{25} Caporaso et al. (2001) in Blandy (2010)
\textsuperscript{26} Caporaso (2008:31) in Blandy (2010)
The degree of misfit determines the nature and degree of domestic change, even if it is regarded as a necessary condition for domestic change in the “basic model” of Europeanization. Actors that do not have to go through a greater structural change to incorporate EU regulations are able to do this easily. There are scholars who consider cases where the adaptational pressure is minor as uninteresting to study. However, this is a matter of dispute on whether a misfit is a necessary condition for domestic change. The argument against the need of a misfit for domestic change states that if Europeanization fits with the current way of doing things, domestic change is unnecessary. Another argument is that there are examples of Europeanization taking place despite adaption pressures. Blandy (2010) argues that even cases where the adaptational pressures is low can be interesting to study, as in the case of Sweden regarding gender equality, where the adaptational pressures are minor to non-existent. Due to the fact that when changes do occur without any misfit the case has a particular interest. Bandy (2010) has a presumption that, actors will promote Europeanization through various creative strategies in an effort to achieve outcomes closer to their own preference. With this Blandy explains that it is too structural to depend on a factor showing how good of a fit the actor is and that it leaves too little room for human agencies and the actors involved in the process.

4.3 Feminist legal theory and State-Feminism

Law has been a subject of feminist initiatives for they have created barriers for women’s right to free and equal participation in society. The need for feminist theory in law became noticeable in the process of challenging the content and methods of law. Feminists have long criticized the objectivity and the idea is that everyone is equally treated before the law and how it becomes a problem when it comes to those who are discriminated because of it. Some feminists believe that objectivity is a mask for the masculine interest, or that it is simply an impossible ideal.

Earlier research on gender equality and feminist legal theory in Sweden can be found by Laura Carlson’s thesis Searching for Equality Sex Discrimination, Parental Leave and the Swedish Model with Comparisons to EU, UK and US Law. She states that Sweden is said to be the most equal country in the world, will display marked gender discrimination in the country. Furthermore, the gap between men and women when it comes to gender discrimination and parental leave has not changed since the 1970’s. Feminism and feminist perspective have increased in variety and complexity over time and all place women and gender in focus but each theory has a specific angel or perspective in focus. Many feminists evolve in response to correct a deficiency or add a dimension missing from previous

28 Blandy (2010)
thesis, as will be done with Europeanization in this thesis. Supporters of feminist criticism validate the interdisciplinary of the theory compared to structure and methodologies of conventional disciplines for promoting gender prejudice. Moreover, interdisciplinary research appears to signify widespread acceptance of the new forms and sources of knowledge that are most likely to generate significant and incisive scholarship about women, gender, and traditionally marginalizing human groups. A woman is simply not a female biological being but have other aspects and existence including those of race, ethnic origin, culture, sexual preference, parenthood and age. In each of the systems examined in Carlsons (2007) thesis, the statistics show that women are also discriminated against on these other bases,\(^\text{30}\) and that is why it is important to consider feminist theory when studying Europeanization.

A basic concern within state-feminism is to understand how gender issues are put on the political agenda. When analyzing process of policy formation it is relevant to analyze how policies are actually framed. In feminist literature regarding State-feminism, there are various perspectives on the relationship between gender and state. These can be divided in to a positive and a more skeptical and radical one. The skeptical view does not consider states as being able to act as a neutral institution and is dominated by men. They view the state as created by men, for men. This radical perspective mainly existed during the 1970’s and 1980’s but there are still some feminists who are skeptical of the state and see it as a patriarchal institution which is difficult to change. The more positive view considers the state as being useful and that it has the potential of becoming “women friendly” if used to further feminist practices and ideas. In state-feminist studies, the state is questioned in what role it plays in developing a gender-equality policy. Certain characteristics stand out as important for success of the studies such as if the leadership was or was not feminist. Also how big a norm entrepreneurs and equality agencies play and if the subject is addressed in different forums. A new context has been brought upon State-feminist through Europeanization, one where several different levels of policy-making should be analyzed, counting the supranational one, however this will not be done in this thesis.

\(^{30}\) Carlson (2007)
5 History

The following chapter will present a historical development of Sweden's and the European Union's legislative work on the subject of gender equality. In addition, a further explanation will be on EU-directives relation to member states.

When looking closer at the structure of the European Union, the difference between the areas of cooperation becomes clearer. The framework that the EU is able to legislate within is created out of what the member states decided to transfer to the EU. The range of competes and the depth of the integration of the EU consequently differs depending on the area of legislation. This is a result of compromises between the states who wish for a greater supranational integration and those who value the member states ability to act on its own. As a consequent, details within the regulations both vary and are complicated. To get a better understanding of Sweden and the EUs development and work for gender equality policy a historical presentation of the important events will be presented.

5.1 The development of Sweden’s gender equality policy

1921 is considered a milestone in Swedish gender equality policy. This was the year when women for the first time had the right to vote in general elections and the enforcement of the new marriage act made them equalized to men. After the economic crisis in 1930 the birthrates were low making the government enforce child benefits in 1940. In the 1960’s the discussion on gender roles increased and the question on roles within the family and society was explained by socially learned norms and expectations. As a result women wanted to be a bigger part of the labour market and with its positive affects this further lead to a better child care system being legislated. For women to be able to work and earn their own salary was a big step for equality between men and women. During the 1970s the Swedish equality policies were work related and consisted of women becoming economically independent and treated equally on the labour market. In the 1980’s, the first equal opportunities ombudsman was created to make sure that the laws were practiced. Later during the 1990’s and beginning of the 21st century, gender related questions even infiltrated power structures making gender a primarily focus in debates on power positions. The concept of gender mainstreaming is about spreading gender equal norms through legislative framework to prevent

31 Bernitz (2010)
32 Fürst (1999)
33 Fürst (1999)
34 Falk-Thanning (1992)
35 Fürst (1999)
gender discrimination and has been a common subject in public debates during the past 10-15 years.\textsuperscript{36}

In 1994 Swedish Parliament formally approved the membership of the EU and in 1995 Sweden left EFTA which it had been a member in since 1960. The membership meant some change were made in the Swedish constitutional law, but were however not necessary with the ratification of the Lisbon Treaty. Furthermore, the Swedish parliament’s conditions for the EU to omit the right of decision is that it does not oppose national polity and that the EU provide protection of human right equal to Sweden’s and the European Convention on Human Rights.\textsuperscript{37} The regulatory frame work does not very different compare to the EU’s concerning human rights and the regulations of the national polity do therefor not hinder the transfer of decision making to the EU. Sweden’s extended protection of rights system is internationally seen as relatively weak making the condition concerning protection of human rights by Sweden not seen as an obstacle. The EU has adopted a separate ambitiously designed charter of rights, which is binding for all the member states since the Lisbon treaty came into force.\textsuperscript{38} Moreover, the success that Sweden has had with working for gender equality can be explained by the calm political situation within the country the past century and the economic growth during the 20st centuries later half. Tax policy, parenteral insurance and the public sector have all had great importance for the development of women’s ability to be seen as equal to men in the Swedish society. In addition the following chapter will present the history of the European Union’s legislative work for anti-discrimination law.

\section*{5.2 The history of gender equality in the EU}

Gender equality is considered essential for growth and poverty reduction according to the EU. However, the European Commission officially states that \textit{“gender inequalities are still entrenched in many cultural, social and political systems”}.\textsuperscript{39} The Equal-pay principle for men and women was first adopted in the Rome treaty in 1957, although, it was not until the 70’s that the member states began to administer the principle. In the beginning, the initial purpose of the principle was not equal rights, but to prevent the labour market from becoming distorted from women’s lower salaries.\textsuperscript{40} In the year of 1975 directives were also created to strengthen women’s rights on the labour market for expectant mothers and women with children.\textsuperscript{41} Later, with the enforcement of the Amsterdam treaty in 1997, the promotion of equal opportunities lead to the creation of the concept of gender

\begin{thebibliography}{99}
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\bibitem{37} Bernitz (2010)
\bibitem{38} Bernitz (2010)
\bibitem{39} European Commission on Gender equality
\bibitem{40} Espmark, Thysell (1995)
\bibitem{41} Espmark, Thysell, (1995)
\end{thebibliography}
mainstreaming, improved rights for women and the EU promised women equal rights to men. Women’s ability to influence and their conditions within the working life has been improved through action plans active both within the EUs institutions and on the labour market in general. An additional purpose of the legislation is to advance the subject of equality in to legislation. The implementation of the Equal-pay principle later developed in to the law on gender equality and was in the beginning not seen as a matter of fundamental rights but rather had economic reasons. The first article which called out for equal pay for men and women for work of equal value was article 119 of the original EEC Treaty.

This thesis would argue that it is safe say that the most progress in gender equality within the EU has been since the 1990s and the enforcement of the Amsterdam Treaty. It introduced new wide-ranging provisions on fundamental rights and a new, far broader, anti-discrimination provision, Article 13 of the EC Treaty. It empowers the Community to take appropriate action to combat discrimination and has generated important changes to the existing legislation on gender equality. There are two directives that are of critical importance to the scope and content of EU anti-discrimination law: the Race Directive, discrimination on the ground of racial or ethnic origin, and the Framework Directive, both enacted in 2000. They outlaw discrimination on the grounds of religion or belief, disability, age, and sexual orientation. These instruments have had a great impact on the changes to the legislation governing gender discrimination, in particular the amendment in important respect to the Equal Treatment Directive.

5.3 Regulations and directives

In discussing if the EU could be an influential factor for legislative change this thesis consider that some further explanation of the EU Directives could be of use.

The Unions legal acts are divided into primary legislation and secondary legislation. The treaties are all considered as primary legislation which means that they constitute the foundation of EU law. They state what procedure, competence and form of legal document that should be used. However, for the activities of the EU to be efficient there need to be something more than just the general treaty agreements. Secondary legislation are issued by all the different EU institutions and include all of the legal acts such as directives, regulations, recommendations and all require

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42 Tallberg (2001)
43 Espmark, Thysell (1995)
44 Ellis (2005)
45 Ellis (2005)
46 Ellis (2005)
47 Blandy (2010)
48 Bernitz (2010)
additional rules to be efficiently implemented by a member state.\textsuperscript{49} The European Union’s legislation should not interfere with the member state more than necessary, in some cases identical rules on a subject will not give the desired results. Organizational, historical and social reasons should be taken into account and the difficulties with an identical model should be presented. Compared to treaties, directives do not strive to unify an area and do not demand the states to act in the same way, but rather harmonizing the states system of regulation. The directives contain of clear regulations of purpose, but let the member states them self’s decide on how to achieve the set out goals, making no need for states to enforce new authorities or legislate new laws. There is always a time limit assign to a directive to when the member states have to incorporate or implement the directive.\textsuperscript{50} Directives are the most important source within EU labour law and must be incorporated by all member states national legislation and the Discrimination Act and the Equal-pay principle are of such.\textsuperscript{51}

Directives are binding to member state in the way that it is the common goal that is binding but it is up to the national administrative authority to decide the approach to reach them. However, if the states own legislation already reaches the goals set out in the directive, no change must be made. Directives that are detailed define the framing of the member states legislation on the subject. If member state in any way would be unable to succeed in implementing the directive, it is considered guilty to infringement against the EU. The Commission then has a central role in controlling the implementation and to criticize in the matter.\textsuperscript{52} If a member state would refuse to follow the Commission’s recommendations, the Commission has the ability to bring the state before the European Court of Justice. It has expressed that neglecting the implementation of any directive due to the nation parliament not being able to make required decisions is not an acceptable excuse. Moreover, the Commission publishes reports yearly of the implementation of directives by the member states, among other things. Great Britain and Denmark have successfully implemented directives in a correct way and in appointed time, when the opposite has been for Italia.\textsuperscript{53} The jurisprudence of the European Court of Justice (ECJ) is also considered secondary legislation. If a national court is not confident in how to interpret EU legislation, the ECJ is empowered to advice national courts as it is important that EU legislation is interpreted consistently. In offering such advice the ECJ is not laying down a ruling but rather making a statement on how laws is to be interpreted. Both EU law and ECJ are prior to national legislation. Altogether the European Union’s legal acts represent

\textsuperscript{49} Bernitz (2010)  
\textsuperscript{50} Bernitz (2010)  
\textsuperscript{51} Blandy (2010)  
\textsuperscript{52} Bernitz (1998)  
\textsuperscript{53} Bernitz (1998)
lacuis communaulaire and member states are obliged to follow these laws. There is an important difference between Sweden and the EU which is relevant for this thesis. In Sweden, legislation is always prepared by preparatory documentation and Blandy (2010) explains that “these facts are very important for Swedish courts when they interpret national legislation”. The legislation that is to be decided on is laid down in those documents in considerable detail and then later only referred to in the finished legal document. The EU legal act, on the other hand, begins with a brief preamble in the finished law, stating the legal basis and purpose of the directive. The Swedish government has drawn attention to the difference between the two, and has declared the Swedish preparatory work can no longer be considered to provide an authorities interpretation of a subsequent legislation. In addition, the government have been stressing the importance of the purpose set out by in the preparatory work not contradict EU legislation.

6 The preparatory works, legislative changes over time
The preparatory works and the governmental bills are here presented and how the EU has been discussed during the legislation in Swedish law on gender equality and anti-discrimination. A tablet is created for the reader to get an overview of the legislative changes over time.

As a first presentation of the legislative changes over time a tablet is created to make it easier for the reader to see the changes in the directives in their purpose, who they apply to and in what relations they are applicable. This will show how the European Union has implemented new legislation of equal treatment intended for men and women and how the new Swedish legal framework concerning equal treatment has a much broader range. The European Union does not have a Discrimination act as comprehensive as Sweden but do however apply to these concerns through the Equal Treatment Directive of the EU and the Directive establishing equal treatment between persons irrespective of racial or ethnic origin and Directive establishing equal treatment in employment and occupation. EU directives are formulated for all the member states to be able to meet and in this thesis needs to remember that; if the member states own legislation reaches the goals of the EU directives, no change has to be made. And the member states do not have to do any legislative
changes if their own legislation reaches the goals of the EU Directives. They can however further develop them, if they see fit.⁶¹

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<tr>
<td>The Swedish Equal Opportunities Act (SFS 1991:433)⁶²</td>
<td>To promote equal rights between Men and Women in working life.</td>
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<td>Work, the terms and conditions of employment and other working conditions, and opportunities for development in work.</td>
</tr>
<tr>
<td>Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast)⁶³</td>
<td>Ensure the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.</td>
<td>Men and Women</td>
<td>Access to employment, including promotion, and to vocational training working conditions including pay occupational social security schemes.</td>
</tr>
<tr>
<td>Swedish Discrimination Act (SFS 2008:567)⁶⁴</td>
<td>Combat discrimination and in other ways promote equal rights and opportunities.</td>
<td>Regardless of sex, transgender identity or expression, ethnicity, religion or other belief, disability, sexual orientation or age.</td>
<td>Working life, education, starting or running a business and professional recognition, membership of certain organizations, good service and housing, health and medical care, social insurance, military and civilian service, measures against harassment, public employment and prohibition of reprisals.</td>
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⁶¹ Bernitz (1998)
⁶² SFS 1991:433
⁶³ The Recast Directive 2006/54/EC
⁶⁴ SFS 2008:567
6.1 What does the preparatory work say

This chapter will present how the EU has been discussed through the preparatory works from 1991 to 2009 and if signs can be seen of the EU has influenced Sweden legislatively.

The preparatory works used by Swedish government in policy making is a generic term for reports, governmental bills and considerations brought forward, before the Swedish parliament decides on a new law. Preparatory works does not exist to all Swedish laws, a new law which consist of changes from a former law usually does not have any preparatory works. Since the beginning of the membership in the EU, laws on gender equality has developed in to what they are today; the Discrimination Act 2008:567. Act SFS 1991:433 was carried out before Sweden became a member state during its member ship in the EFTA-agreement. However, since then, Sweden’s legislation concerning gender equality has taken a new turn from being labour oriented to counting gender discrimination as a right equal to other rights. It has been able to achieve these changes through bills carried out by the government. These were 1994:292, 1998:208, 2000:773, 2005:476 and at last the Discrimination act 2008:567. The EC-law signified a change in the Swedish law further in 1992 on the subject of wage discrimination. Traditionally, gender discrimination and wage differentials would only be considered a subject of interest and settled through negotiations between parties which would determine the wage differential. This was changed when Sweden had to adapt to EC law.

The first change was made in 1990 when the Swedish government proposed a new gender equality law through Equal Opportunity Act 1990/91:113, which would replace the existing law from 1979 on equality between women and men in working life. The main aim for the new law was to improve women’s conditions in the working life and stated that the parties of the labour markets must cooperate for equality to be able to succeed. Government bill - a shared responsibility (1993/94:147) writes of an investigation made to illustrate the consequences for the social welfare system and equality within Sweden while participating in various forms of the west-European integration. They state in their final report that high expectations are set within the EU on an active contribution by Sweden in matters of equality. The investigation also believed that a membership in the EU would give Sweden the best economic growth which would give Sweden better conditions for social welfare and equality between men and women.

Government bill 1994/95:19 discusses state and equality matters and how Sweden through its earlier membership in the EFTA-agreement fulfills the laws by the EU on gender equality issues. In

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65 Domstolsverket - förarbeten
66 Regeringskansliets rättsdatabaser
67 Prop. 1999/2000:143
68 Prop. 1993/94:147
the preparatory works, the government discusses how Sweden will be able to participate in the comprehensive work toward equality not only through legalization but through projects and networks as well. The legal usage that had been developed at an EU level was easily adapted by Sweden because Swedish equal opportunity act was already adjusted to meet the standards of EU.

**Government bill 1997/98:177** has an entire chapter on EC-law and contains proposals on a new law concerning discrimination on grounds of ethnic origin. It states that there exist laws against discrimination on the basis of nationality and sex, and how the subject of equality is a central matter in EC-law, in particularly prohibition against discrimination because of nationality. This bill states that during this time the EU did not have any laws on discrimination concerning ethnic origin and how this is a subject to discuss when formulating national laws. EC-law does not side in single cases and only comment national laws correspondence with EC law. Subjective cases are left to be resolved within national laws.

**Government bill 1999/2000:143** proposed a change in the national equality act and the law on discrimination on grounds of ethnic origin in the workplace. In bill 1999/2000:143 the subject of EU-law has infiltrated relevant parts of the bill more than before by how EU law is mentioned through the bill. Earlier preparatory works had commented on how the planned changes would result in implementation of the EU directives and later preparatory works had a chapter concerning the EU’s role. It is stated how EC-law has been taken in to consideration. Bill 1999/2000:143 on a proposed change of the equality act show how Sweden has left important subjects to offer the same level of protection as EC-law against discrimination on grounds of nationality and gender which has led to other solutions settlements being made. So eight years before the actual new act comes in to force preparatory work discuss how great reason show that a new law will be adjusted to meet the other anti-discrimination laws. The member ship has lead Sweden to create stricter laws in hope of a result of a wage negotiation result in equal pay for equal or equivalent work. Chapter seven of Bill 1999/2000:143 on prohibition against sex discrimination and the Swedish gender equality acts relation to the other laws on discrimination in the working life state; that the aim of the overview of the gender equality act is to correspond with EC-law. It is also important by principle that the different laws on discrimination works for a common concept of discrimination. The government argues that protection against discrimination is a protection of human rights and of those rights protecting protection in the equality act must be the same as 1999’s three anti-discrimination act.

The concept of discrimination used in Swedish civil law is taken from EC-law and has been used in

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69 Prop. 1994/95:19  
70 Prop. 1997/98: 177  
71 Prop. 1997/98:177  
72 Prop. 1999/2000:143
numerous occasions by the European court of Justice. Bill 1999/2000:143 also refers to the principle of equal treatment in the EC-treaty which establishes the obligation the member states have to make sure that the principle of equal salaries between men and women for equal or equivalent work is carried out.\textsuperscript{73}

**Bill 2004/05:147** on extend protection against sex discrimination mostly contain proposals on changes to the Equal Treatment between Women and Men and the prohibition against discrimination. The bill had two purposes; the first was to carry out EC-law in regards to where proposals has been set out and the other was to strengthen the protection against discrimination on grounds of gender to meet the level of protection as well as the other grounds of discrimination which had a more extended legal regulations. During this time period the development within EC-law came to imply that the legal protection against discrimination on grounds of gender was less extensive and one example of this was how the law on anti-discrimination from 2003 was not applicable on grounds of gender.\textsuperscript{74} Another example is how the gender equality act is not designed in the same way as prohibition against discrimination valid through 1999s labour laws.\textsuperscript{75}

**Bill 2005/06:155** on new goals for gender equality states in chapter 3.3 that international work on the subject of gender equality how Sweden and the other Nordic countries, in an international comparison, often is seen as a pioneer in gender equality. Sweden has the most equal amount of women and men in political decision making and on the labour market.\textsuperscript{76} This leading position is discussed in the preparatory works as creating demands on contribution in the international cooperation. The government goal is to integrate a gender perspective in all political areas and also include the EU collaboration and this goal was emphasized by the Government in 2005. Chapter three on cooperation, emphasize how the domestic work towards gender equality contribute to strengthen the gender equality work within the EU and Sweden, continuous to stress the importance of working on negotiations on gender equality within EU political areas. Gender equality has been integrated in the EUs strategy of employment ever since it was initiated in 1997. In an evaluation done by the Commission in 2002\textsuperscript{77}, it was established that the strategy had had positive effects on the member states policy on gender equality. During this time, Sweden had with six other member states agreed to present a pact for gender equality. The pact purpose was to increase the labour

\textsuperscript{73} Prop. 1999/2000:143
\textsuperscript{74} Prop. 2004/05:147
\textsuperscript{75} Prop. 2004/05:147
\textsuperscript{76} KOM(2006)71 in prop. 2005/06:155
\textsuperscript{77} KOM(2006)71 in prop. 2005/06:155
supply especially in countries where women employment rates were low, to activate the work for equality in accordance with EC-treaty.\textsuperscript{78}

\textbf{Bill 2007/08:95} is the last bill before the implementation of the new Discrimination act and proposes an new law on discrimination and a law on a new Ombudsman against discrimination. The new law presents protection against two new grounds of discrimination; transgender identity and age. On the discussion of the discrimination law turning in to one; the government argues that it is more important what is said in the laws than the amount of them.\textsuperscript{79} EU-law is referred to only in recalling the EU fundamental laws and directives that the member must follow and which directives that are ratified in the implementation of the new act. The committee on discrimination point out that there are separate ideas of what amount of protection is set out by EU legislation against juridical persons, the Government points out that there is no legal demand set out to the member states by EC-law.

In 2009, Sweden’s new Discrimination Act entered into force and it apply to most areas of society, such as working life, education, goods, services and housing, social services, the social insurance system, health care, national military and civilian service and regarding public appointments. It covers not only sex, ethnicity, religion and other belief, sexual orientation and functional disability but also gender identity and age, both of which have not previously been explicitly covered by non-discrimination legislation. Worth mentioning is how the bill also underlines that there should be a cost for discriminating.\textsuperscript{80} Through the new Discrimination Act, the Equal Treatment Directive of the EU (76/207/EEG, changed through directive 2002/73/EG), the Directive establishing equal treatment between persons irrespective of racial or ethnic origin (directive 2000/43/EC) and directive establishing equal treatment in employment and occupation finally are ratified.\textsuperscript{81}

6.2 How the EU is mentioned in the preparatory works

\textit{This chapter discusses how often the EU is mentioned in the governmental bills that lead to the implementation of the new Discrimination act. The purpose is to see if there are any signs of if the EU was considered during the formulation of the bills.}

**Governmental bill 1990/91:113** - In the ratified law in 1991 on Equal Opportunity, EC law is mentioned three times in the whole proposal. The first is in stating how the new law will mean an adaption to the regulations within the European Community. The other reference is in a section on general purpose on how the anti-discrimination law includes indirect discrimination in a higher

\textsuperscript{78} Prop. 2004/05:147
\textsuperscript{79} Prop. 2007/08:95
\textsuperscript{80} Regeringskansliet - Sweden’s anti-discrimination act
\textsuperscript{81} Prop 2007/08:95
degree and how the new content of the law should now be equal to the on mentioned in EC-law. The third was a case settled in the European Court of Justice on the equal pay principle.

**Governmental bill 1993/94:147** - Government bill 1993/94:147 mentions EC-law six times with the first time being in a chapter called *An international perspective* on how Sweden is expected to actively participate in gender equality issues. It shortly brings up the EFTA-agreement and how Sweden and the other EFTA-countries through it succeed to adopt the EC-rules and jurisprudence within the equality area and it is also mentioned again how new law will mean an adaption to the regulations within the European Community. In a general text on regulations deciding on wage differences EC law is referred to through cases on the subject and later again still discussing the European Community’s principle on equal pay. The Swedish Equal opportunity ombudsman is the last to mention the European Community through requesting more resources to meet the standards of the new Equality law from 1991.

**Governmental bill 1997/98:55** - The Government bill treats measures on counteracting violence against women, prostitution and sexual harassment and when reading it EU law was found mentioned 10 times. The EU is first mentioned in a chapter called *An international perspective* on how many international documents exist translated in to Swedish, including EC- acts of law. The chapter *An international perspective* in this bill had a chapter called *the work within the EU* explaining how violence against women would change to the first pillar through the Amsterdam treaty. EC law was only mentioned in one other place of the bill, in the chapter of sexual harassment in working environment where you can read how work set out to correspond with EU definitions.

**Governmental bill 1999/2000:143** - Consideration of EC law is taken throughout the bill and there are also signs of how legal texts are formulated more gender-neutral and more cases settled at EU are also referred to. It is evident to see throughout the bill how it is changes are made to correspond with EC-law and has on that occasion taken the three new laws of discrimination within the working life under consideration. Equal opportunities Ombudsman also comments how this does not hinder Swedish legislation from having an even stronger protection against discrimination. This bill contains a chapter called *EC-law and systematic job evaluation*.

**Governmental bill 2004/05:147** - Governmental bill 2004/05:147 is a proposition on change which would, if ratified, mean an equivalent level of protection on sex discrimination in Swedish national law as on ethnic origin, disabilities and sexual preference. It would also mean that the Directive on equal treatment would be carried through on areas affected. The bill has a whole chapter on the EU directives on their origin and contents.
**Governmental bill 2007/08:95** - The first part of the bill which mentions EC-law is on the subject of international engagement which describes EC-laws important for national laws and other regulations of protections from discrimination. The bill has a chapter called EC-law where the relevant articles to the subject are presented to discuss and lay down the obligations of the member states. After that, a chronological presentation follows of all the EU directives that has led to the enforcement of the new discrimination act.

### 7 Results and Analysis

*The research results and analysis are divided between two chapters which discuss the research questions that were presented in chapter 3.2.*

#### 7.1 The EU as an influential factor

This chapter discusses the first research question of whether the EU could have influenced Sweden in the implementation of the Discrimination Act. It states:

- *Is the EU one of the factors who influenced Sweden in the implementation of the new Swedish Discrimination act which came in to force 2009?*

Through studying the preparatory works and the government bills how they have discussed the EU during the legislative changes a quantitative legal dogmatic method has been used to see how the EU has been mentioned and if it could be an influencing factor of the legislation of the Swedish Discrimination Act. The study in this thesis show very few signs of that the EU would be a influencing factor in this particular study.

The directives Sweden is obliged to implement are mentioned in the bills and could show some consideration. However, other factors such as different norm entrepreneurs have played a larger role which is suiting for this thesis theory of Europeanization and State-feminists theory. The EU directives have been implemented without any adoptational problems and with Sweden meeting the goals of the directives, national legislation has been developed further. This can be seen through the created tablet.
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Through the tablet it can be seen that in Sweden’s case, Sweden has been able to ratify the EU acts and still create a Discrimination law much more advance than the one on EU level. The chapter on what the preparatory works says shows signs of how Sweden did not go through large adaptational

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82 SFS 1991:433
83 The Recast Directive 2006/54/EC
84 SFS 2008:567
problems when implementing EU directives. The preparatory works also shows more signs of being international oriented than having a concentration on meeting EU standards. Government bill 1994/95:19 discusses state and equality matters and how Sweden through its earlier membership in the EFTA-agreement fulfills the laws by the EU on gender equality issues. In the second chapter it discusses how often the EU was mentioned in the governmental bills that lead to the implementation of the new Discrimination act. The purpose was to see if there were any signs of if the EU was considered during the formulation of the bills. The first bill, 1990/91:113, mentioned EC law three times in the whole proposal. However, further along a chapter with an international perspective was established and Governmental bill 1997/98:55 even had a chapter called the work within the EU in the chapter of An international perspective. And later, governmental bill 2004/05:147 has a whole chapter on the EU directives on their origin and contents. Through the governmental bills it is shown that the EU has increasingly been mentioned, which shows signs of that the EU can be a factor of influence in national legislation in Sweden. It has not, however, been stated that the changes of the acts to the current Discrimination Act is done in consideration to EU law. The only times that the EU is mentioned is when ratifying directives and due to the EFTA-agreement Sweden succeed to adopt the EC-rules and jurisprudence within the equality area, before the membership and now during. And as explained earlier, the way that the member state is binding is by how the directives have a common goal. It is up to the national administrative authority to decide the approach to reach them.

7.2 The legislative changes explained through the theories

The second chapter discuss how domestic adaption work and what other actors that play a role in the theories chosen in this thesis. The research question to discuss was:

- How can the legislative changes be explained through the theories of Europeanization and State-feminist?

The theory of Europeanization has been used in this thesis to discuss if the changes that have been done in Swedish domestic legislation could have been influenced by the EU, hence Europeanization. In this thesis a basic model of Europeanization has been used. And when applying the Case of Sweden to the models three step framework it will be as followed: The first step is to pay attention to what reasons there is for domestic adoption. In Sweden’s case it is obliged as a member state to implement the EU directives. The second step is to identify the level of misfit. During the time of the enforcement of the Swedish Discrimination Act 2008, the Swedish Equality act from 1991 was internationally seen as weak and Sweden’s legislation on gender equality was similar to the EU’s.\(^\text{85}\) This meant that the degree of misfit was low. The preparatory works also show no signs of any

\(^{85}\) Chapter 4, Theories
difficulties in implementing the directives. Finally, the third and last step is to analyze how certain actors and institutions respond to the adaptational pressure.

The purpose to use feminist legal theory was to criticize the objectivity and the idea that everyone is equally treated before the law. The Swedish Discrimination act is gender neutral and it can be discussed if Sweden legislatively could go backwards in development. Ellis (2005) discusses how it is “not sufficient for the achievement of equality simply to require the same conditions for all people... because in practice some sections of the community have been historically so disadvantaged as to be unable to compete in the race to the first place”. An answer to this can be read in governmental bill 2007/08:95 on the discussion of the discrimination law turning in to one; the government argues that it is more important what is said in the laws than the amount of them. However, it can not be ignored that Swedish women de facto have less favorable rights now than before the ratification of the coherent Discrimination act. State-feminist ongoing research on how norm entrepreneurs are able to use the EU as an opportunity structure is explained in the chapter on Europeanization, domestic actors find creative ways to use the EU as a “window of opportunity”. The Swedish entry was a widely anticipated political event and norm entrepreneurs used it strategically. The membership created an opening for norm entrepreneurs to use the EU as a forum and an opportunity for domestic change. The third step of the basic model of Europeanization is to analyze how certain actors and institutions respond to the adaptational pressure. Actors, formal and informal institutions are a mediating factor for domestic change in Europeanization. With how directives do not strive to unify but rather harmonize the states system of regulation and let the state them self's decide on how to achieve the set out goals, signs show that Sweden itself and accompanied by norm entrepreneurs and other actors, were the ones to work for the new Discrimination act. When studying the traditional impact of the EU, the question of most interest for research is whether the increasing influence of the EU eventually might lead to a loss of national particularity. And for Sweden who often is seen in an international comparison, as a pioneer in gender equality, the loss of its leading role within gender equality could be its loss of national particularity. Nevertheless, Government bill (1993/94:147) state in their final report that high expectations are set within the EU on an active contribution by Sweden in matters of equality, which could be seen as creating pressure on Sweden to keep on being a leading role within gender equality and consequently creating the coherent Discrimination act.

86 Ellis (2005)
87 Prop. 2007/08:95
88 Blandy (2010)
89 Blandy (2010)
7.3 Europeanization or ordinary change

There is no easy way to see if the EU could be a factor of influence and if the EU laws incorporated into national law could qualify as a result of Europeanization. This chapter discusses whether there could be a yes or no answer to if a political system could be called Europeanized.

Even if there is no misfit in between member states and EU principles per se, the EU can still provide with new opportunities for promoting an area of interest or principle. And even if the first act of change is not done by the EU it can still be an effective tool. The Swedish entry was a widely anticipated political event\(^9\) and norm entrepreneurs were prepared to use it strategically. The opening offered by EU legislation and Sweden and other actors appearance at the scene willing to use the opportunity are crucial conditions for the course of the domestic process. For Europeanization to be successful it needs actors and the member ship of the EU gave Swedish actors new forum to reformulate and bring forward old issues.

There are two ways a level of Europeanization can take place. It is clear that the way Europeanization takes place depend on how EU requirements are handed down to national level; either as soft means as of the open method of coordination or very concrete as a directive. The less the concrete measures are the more difficult it is to study and they might need change of perspective. Traditional impact to study of the EU and the question of most interest for research, is whether the increasing influence of the EU eventually might lead to a loss of national particularity. As mentioned earlier and can be read in Jungar and Svensson (2001) it is women in Sweden who generally are more skeptic towards the European Union than men.\(^9\) They tend to be critical towards the European Union because of their fear a the Swedish membership could create a “backlash” to a more conservative society. The questions of a Euro-wide coverage of both policies and the loss of national particularity have been long disputed. Olsen and Sittermann however argues that there are evidence showing of both convergence and of national characteristic,\(^9\) although this might differ between different policy fields. According to Birgit Sittermann in her article *Europeanisation – A Step Forward in Understanding Europe*? “there has been no revolutionary change in any of the national system and certainly no significant convergence towards a common institutional model”.\(^9\) It is hard to see a whole sale convergence or divergence in national policy with so many actors and factors that needs to be taken into account. It is undeniable that there is an EU influence but there is no yes or no answer to whether political systems can be called Europeanized.\(^9\) There is no easy way to see if the

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\(^{9}\) Blandy (2010)

\(^{91}\) Jungar, Svensson (2001)


\(^{94}\) Sittermann (2004)
EU could be a factor of influence and if the EU laws incorporated into national law could qualify as a result of Europeanization. Sitterman (2004) underlines the importance of conceptualizing misfit as it can be the main individual factor determines Europeanization’s success or failure.\textsuperscript{95} Her approach is helpful however limited to concrete requirement of a directive.\textsuperscript{96} It can be measured objectively as if adoption has taken place or if a national situation corresponds. In processes where Europeanization has less concrete requirements, misfit is more a subjective dimension and difficult to measure. The misfit approach is a good way to try to understand an adoption process and the situation national actors are confronted with even though it is not easy to conceptualize softer means of EU influence. Sittermann (2004) explains misfit as only considered as a “\textit{necessary but not as a sufficient condition for domestic change}”.\textsuperscript{97} Europeanization does not only affect policy, polity and politics but also regime types in policy areas, individual actors to the overall function of the political system. The multi-dimension effects of Europeanization are what makes Europeanization a field for further research.\textsuperscript{98}

8 Summary

Sweden has since the EU-membership established a new Discrimination act and this thesis aim has been to discuss if the EU could be a factor that influenced Sweden to that change. To discuss how the EU might have affected Swedish legislation this thesis looks to how the EU is discussed in the preparatory works. Preparatory works are used by the Swedish government in policy making before deciding on a new law and is to give a better understanding to the theoretical background and how the policy-making process deals with the effects of the EU policy at national level. To help explain how the EU could be an influential factor the theory of Europeanization and State-feminist theory are applied. These theories are also discussed further on what role norm entrepreneurs’ play and how they use the EU as an opportunity structure. Through this thesis the question is raised if signs can be seen that the membership of the EU has affected Sweden legislatively. This is because Sweden has since the membership changed its core act on gender equality to the now existing Discrimination act which covers six other grounds of discrimination besides gender. The laws on gender equality are in the new act gender neutral, in comparison to the old Act that worked to strengthen women’s position on the labour market. Whita gender neutral act it can be discussed if Sweden legislatively could go backwards in development. The directives Sweden are obliged to implement are mentioned in the bills and could show some consideration of EU when they are implemented. However, other

\textsuperscript{95} Sittermann (2004)
\textsuperscript{96} Sittermann (2004)
\textsuperscript{97} Sittermann (2004) p. 13
\textsuperscript{98} Sittermann (2004)
factors such as different norm entrepreneurs have played a larger role which is suiting for this thesis theory of Europeanization and State-feminists theory. The EU directives have been implemented without any adoptational problems and with Sweden meeting the goals of the directives, national legislation has been developed further. Through the tablet it can be seen that in Sweden’s case, Sweden has been able to ratify the EU acts and still create a Discrimination law much more advance than the one on EU level. The chapter on what the preparatory works says shows signs of how Sweden did not go through large adaptational problems when implementing EU directives. The preparatory works also shows more signs of being international oriented than having a concentration on meeting EU standards. Through the governmental bills it is shown that the EU has increasingly been mentioned, which shows signs of that the EU can be a factor of influence in national legislation in Sweden. It has not, however, been stated that the changes of the acts to the current Discrimination act is done in consideration to EU law. The only times that the EU is mentioned is when ratifying directives and due to the EFTA-agreement, Sweden succeed to adopt the EC-rules and juris prudence within the equality area, even before the membership and now during. As explained earlier, the way that the member state is binding is by how the directives have a common goal. It is up to the national administrative authority to decide the approach to reach them.

The theory of Europeanization has been used in this thesis to discuss if the changes that have been done in Swedish domestic legislation could have been influenced by the EU, hence Europeanization. In this thesis a basic model of Europeanization has been used. The Europeanization theory is considered the main theory in this thesis for how it analyzes of legal implementation and State-feminism is to explain the role of influential actors. When applying the Case of Sweden to Europeanization’s basic models three step framework, Sweden as seen as having a low level of “misfit” and did not have to undergo any adaptational change during the membership or the enforcement of the new Discrimination act. The purpose to use feminist legal theory was to criticize the objectivity and the idea that everyone is equally treated before the law. The Swedish Discrimination act is gender neutral and it can be discussed if Sweden legislatively could go backwards in development. The Swedish government argues that it is more important what is said in the laws than the amount of them.99

However, it cannot be ignored that Swedish women de facto have less favorable rights now than before the ratification of the coherent Discrimination act. State-feminist ongoing research on how norm entrepreneurs are able to use the EU as an opportunity structure also explained in the theory of Europeanization, how domestic actors find creative ways to use the EU as a “window of

99 Prop. 2007/08:95
opportunity”. The Swedish entry was a widely anticipated political event and norm entrepreneurs used it strategically. The membership created an opening for norm entrepreneurs to use the EU as a forum and an opportunity for domestic change.

Owing to how directives do not strive to unify but rather harmonize the states system of regulation and let the state itself decide on how to achieve the set out goals, signs show that Sweden itself and accompanied by norm entrepreneurs and other actors, were the ones to work for the new Discrimination act. For Sweden who often is seen in an international comparison, as a pioneer in gender equality, the loss of its leading role within gender equality could be its loss of national particularity. Nevertheless, Government bill (1993/94:147) state in their final report that high expectations are set within the EU on an active contribution by Sweden in matters of equality, which could be seen as creating pressure on Sweden to keep on being a leading role within gender equality, and consequently creating the coherent Discrimination act.

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100 Blandy (2010)  
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