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## **The paradoxical gendered consequences of the EU policy on multiple discrimination: The Nordic case**

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**Abstract:** The European Union (EU) has emerged as a powerful international actor whose standards, norms and ideas are spread (Europeanized) to member states and beyond. In equality politics, the EU has become a carrier and promoter of the new politics of equality. The key aim of this article is to explore the Europeanization of the Nordic gender equality discourse in relation to one particular political debate, namely that of intersectionality, or in EU terms, 'multiple discrimination'. Thus, the article explores the ways in which Nordic ideas about gender equality interact with those promoted by the EU. Theoretically, the article draws on the insights of feminist discourse analysis, institutionalism and soft Europeanization, and seeks to combine the two debates to better understand and elucidate the ways in which the ideational shifts that the EU promotes become institutionalized in legal frameworks and equality policy in the member states.

**Keywords:** Europeanization; administrative adaptation; comparative public policy; gender policy; minorities; multilevel governance; neo-institutionalism; non-discrimination; political science.

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## Introduction

The Nordic model of welfare states is intrinsically connected to the issue of gender equality. The welfare states of the Nordic countries have both promoted gender equality and benefited from it. The extensive public sector has offered jobs for women as well as care for their children, thus enabling women's participation in the labour market. The ideas about what gender equality consists of – the so-called Nordic discourse of gender equality – are firmly intertwined with the policies and institutional practices of the welfare states. Ideologically, the discourse has promoted equality of outcome as opposed to more liberal notions of equality of opportunity. This sets the Nordic ideas about gender equality apart from many other European countries and the European Union (EU).

Paralleling the debates on the crises of the welfare states, such notions of 'equality' more generally and 'gender equality' more specifically have come under challenge. With the rise of neoliberalism and New Public Management (NPM), 'equality of outcome' appears old-fashioned, a drag on an otherwise dynamic economic system, and demanding too much focus on structures of inequality and placing too little emphasis on individual merit (Kantola and Squires 2010, 2012).

The changes in the equalities framework have been accompanied by the widening of categories of inequality from gender and class to cover multiple inequalities including, most commonly, race and ethnicity, religion and belief, sexual orientation, age and disability. For gender equality, this signifies that gender as a category can no longer be considered in isolation from other bases of inequality. Feminist theory employs the concept of intersectionality (Crenshaw 1991) to highlight the ways different inequalities intersect, leading to unique forms of discrimination, for example, for ethnic minority women. European policy-makers have also seized on this agenda as evidenced by the emergence of the term 'multiple discrimination' in European equality policy (Kantola and Nousiainen 2009, 2012; Krizsan, Skjeie and Squires 2012). Institutionally and normatively, the shift is resulting in a period of exceptional equality policy-making across Europe and the emergence of 'new politics of equality' (Kantola and Squires 2010).

Whilst the challenges posed to the Nordic discourse of gender equality by multiculturalism have been discussed in scholarly debates (Keskinen et al. 2009; Melby, Ravn and Carlsson-Wetterberg 2009; Magnusson, Rönnblom and Silius 2008), the impact of and the interaction

with the EU has received less attention (Eräranta 2012; Olsson Blandy 2010). The EU has emerged as a powerful international actor whose standards, norms and ideas are spread (Europeanized) to member states and beyond. In equality politics, the EU has become a carrier and promoter of the new politics of equality. For example, the EU directives have triggered and fundamentally shaped the ways that national legislation has been formulated in most member states in the field of anti-discrimination (Kantola 2010).

The key aim of this article is to explore the Europeanization of the Nordic gender equality discourse in relation to one particular political debate, namely that of intersectionality, or in EU terms, ‘multiple discrimination’. Thus, the article explores the ways in which Nordic discourses about gender equality interact with those promoted by the EU. Theoretically, the article draws on the insights of feminist discourse analysis and feminist institutionalism (Bacchi and Rönnblom 2014; Krook and Mackay 2011) and soft Europeanization (Lombardo and Forest 2012) and seeks to combine these debates to better understand and elucidate the ways in which the discursive shifts that the EU promotes become institutionalized in legal frameworks and equality policy in the member states.

This article argues that the EU discourse promotes a shift from gender to multiple inequalities; from emphasizing positive action and welfare policies to emphasizing anti-discrimination policies; and from equality of outcome to equal opportunities to participate in economic markets and political decision-making. This is significant as together these trends promote heightened emphasis on the individual rather than societal structures and the role of law rather than politics in solving inequalities. Yet, the shifts in discourses are not the same in the Nordic countries but need to be studied carefully. Clearly, a lot of the Nordic legacy of defining gender equality in terms of equality of outcome, collective action and harmony between the two genders remains. Furthermore, the fact that the institutional solutions in the Nordic countries are different highlights the fluidity, contingency and potential contradictions involved in these processes.

The article opens with a discussion of its theoretical framework that draws upon recent debates on soft Europeanization and feminist institutionalism. This is followed by the analytical sections that proceed in three steps: (i) mapping out the Nordic discourses on gender equality and discerning some of the differences to EU discourses, (ii) focusing on the EU policy and discourses on multiple inequalities to outline a particular EU model and (iii) evaluating the interaction of these policies and discourses with the Nordic ones.

## **1. Theory: Soft Europeanization and feminist institutionalism**

Europeanization, in its simplest form, refers to the impact of European integration on member state policies, practices and politics, and to the processes by which domestic structures adapt to European integration (Caporaso 2008: 27; Schmidt and Radaelli 2004: 183). ‘Misfit’ between European requirements and domestic policies, processes and institutions is considered a necessary condition for domestic change (Börzel and Risse 2012: 6). In this way, Europeanization can be analytically separated from European integration – the formulation of policies in the European level – but in practice the two are deeply intertwined

through different feedback loops and member states' political responses that impact on integration (Schmidt and Radaelli 2004: 185). The forms and mechanisms of Europeanization vary in relation to policies, polity, politics and instruments. For example, Knill and Lehmkuhl (1999: 2-3) distinguish between three different Europeanization mechanisms: new institutional models altering the domestic rules of the game; changing domestic opportunity structures by altering the distribution of power and resources between domestic actors through different funding and capacity building schemes; and changing the beliefs of domestic actors. Policies have attracted most scholarly attention as institutional change is harder to demonstrate empirically than policy change (Börzel and Risse 2012: 2).

Whilst Europeanization studies that focus on implementing directives, rules and regulations remain popular, there is increasing interest in the more indirect mechanisms by which the EU can exert its power to affect change (Börzel and Risse 2012: 2). Here a distinction between hard and soft law Europeanization becomes pertinent. Unlike hard law (directives, regulations, treaties), soft law is exercised in many forms, such as action plans, recommendations, policy documents and reports. Unlike hard law, it is not binding but can, nevertheless, have significant normative impact on member states.

Existing analyses of the Europeanizing effects of soft law have widened our understandings of the different mechanisms through which Europeanization can occur. This approach to Europeanization also highlights that convergence in national policies is 'neither theoretically predicted nor empirically likely' and rather there is a 'continual arbitrage between national differences, different adaptational pressures, different mediating institutions and outcomes' (Caporaso 2008: 31). Domestic actors use the European policy in different ways, sometimes embracing it and sometimes resisting it, which results in a differentiated impact of Europeanization in member states and beyond (Liebert 2003a: 263). Soft law measures provide actors with a general, yet sufficiently vague framework, which they can interpret to increase their political discretion (Jacquot and Woll 2003: 6). The so-called bottom up approaches to Europeanization take the domestic level as their starting point and argue that EU policies are neither a necessary nor a sufficient condition for Europeanization (Radaelli and Pasquier 2008: 41). Rather 'domestic mediating factors' that include 'nearly every domestic structural condition that affects the impact of European integration' shape the outcomes. These factors can range from cultural, institutional, discursive, formal and informal institutions, to norms, state and civil society structures, and traditions of litigation (Caporaso 2008: 30; Liebert 2003a, 2003b).

One should, however, avoid constructing a strict dichotomy between hard and soft law Europeanization and rather should focus on the interplay between the two (Beveridge 2012). In this vein, Krizsan and Popa (2010) study the Europeanization of domestic violence policy in Central and Eastern European countries through three mechanisms: (i) constructing domestic violence as a conditionality question (hard law), (ii) Europeanization through capacity building and funding (soft law) and (iii) strategic use of the EU to motivate policy change (norms and ideas) (Krizsan and Popa 2010). The first mechanism takes place through formal institutions, the second through formal and informal institutions and the third is about norms and discourses. Importantly, the existence of three mechanisms of Europeanization

illustrate that these processes take place through different paths and together they explain EU's 'uneven impact' (Krizsan and Popa 2010; Woll and Jacquot 2010: 113).

It is evident that formal and informal institutions, along with actors and ideas, beliefs and discourses are at the centre of Europeanization debates. The interest in studying these is shared by (feminist) new institutionalism which can itself take different theoretical forms (Krook and Mackay 2011; Weiner and MacRae 2014, *this special issue*). In this article, I draw on the debates on poststructural feminist perspectives on discourses and institutions to understand the complex interactions between Nordic and European discourses and policies.

The development of feminist institutionalism has generated a debate on the possibilities and pitfalls of (feminist) discursive institutionalism (Bacchi and Rönnblom 2014; Kulawik 2009; Schmidt and Radaelli 2004). In attempts to develop 'discursive institutionalism', some authors define discourses as ideas and communicative action in a Habermasian sense and give them a causal role in relation to institutions (Kulawik 2009; Schmidt and Radaelli 2004). Others define discourses in a Foucauldian way in terms of knowledge and power. They maintain a critical distance from the notion 'discursive institutionalism' because of its tendency to fix institutions as something given, an antithesis to Foucauldian ways of understanding institutions as fluid and in constant need of reproduction (Bacchi and Rönnblom 2014: 171).

I follow the poststructural take on discourse analysis and institutional analysis developed by Bacchi and Rönnblom (2014) who suggest that discourse, subjectivity and power are particularly relevant notions to deploy in political analyses. In contrast to Schmidt, Bacchi and Rönnblom argue that discourses always matter in relation to 'institutions' and that it is not an empirical question of whether they matter or not (2014: 174). Heterogeneous relations constitute 'institutions' as objects of thought. Any attempt to analytically fix 'institutions' obscures the politics and power that underpin and form them, leaving them in place as 'givens' (Bacchi and Rönnblom 2014: 178).

To study Europeanization from this perspective is to focus on meaning making and giving; to explore the processes of contestation and attribution of meanings to the concept of gender equality (Forest and Lombardo 2012: 14). This means asking how shifts in national discourses about gender and gender equality relate to the ways in which issues and policies are framed in the EU, for example, in terms of multiple discrimination. One could also ask similar questions about the EU discourses: to what extent do they reflect hegemonic national discourses about gender equality? (Forest and Lombardo 2012: 12.) It has been, for example, argued that the general EU gender regime is based on Anglo-American anti-discrimination model where discrimination law is a primary tool for advancing gender equality and – in contradiction to the Nordic countries – there has been less emphasis on positive measures (Kantola 2010: 19-20). In other words, Europeanization can result in common framings of policy problems across member states leading to shared practices in terms of responses to the problems (Bruno, Jacquot and Mandin 2006: 533; López-Santana 2006: 482). Accordingly, the next sections focus on these relations by discussing the Nordic and the EU discourses and policies and the interplays between them.

## 2. Gender equality in the Nordic countries

Gender equality has been argued to be ‘one of the most prominent hallmarks’ of the Nordic welfare model and its distinctive welfare state character (Melby, Ravn and Carlsson-Wetterberg 2009: 4). In feminist debates, the countries have been described famously as ‘women friendly welfare states’, a term coined by Helga Maria Hernes (1987). The term sets the Nordic feminist perspectives on the state apart from the more Anglo-American feminist theories about the state. The concept of the women friendly welfare state has been treated both as a powerful discourse that silences issues such as domestic violence or sexuality and promotes certain subject positions for women and men (Kantola 2006). Closely related, it has also been explored as a particular normative notion based on Nordic values of equality (Borchorst and Siim 2008: 208) that have been exported both to the EU and its member states and to other parts of the world (Townes 2002).

Unlike in the EU, in the Nordic countries, the tradition of promoting gender equality is in many ways connected to welfare state policies and corporatist procedures. Equality is understood as a social concept connected to social justice rather than to the liberal individualist framework. This means that a number of issues that have been elsewhere seen as inequalities that need to be outlawed with anti-discrimination measures (as, for example, equal pay in the EU), have been treated with welfare policies or positive measures and discussed as labour market issues in corporatist working groups (Fransson 2001: 195). These ideas about gender equality and its promotion have been firmly intertwined with the countries’ institutions and policies. Gender equality has been established as a labour market and social welfare issue, rather than as an inalienable right to non-discrimination (Nousiainen 2008).

In such a setting, anti-discrimination law was not seen as a primary tool for enhancing equality. As a result, gender equality policy has traditionally relied on positive measures rather than anti-discrimination law (Nousiainen and Niemi-Kiesiläinen 2001: 16). Anti-discrimination law aims at creating a level playing field and equal opportunities by outlawing discriminatory practices. In cases of discrimination, however, it places the responsibility on the individual that has been discriminated against to pursue the case for example by taking it to court. Positive measures, by contrast, aim at correcting initial disadvantages and embody a different notion of gender equality. Instead of aiming at equal opportunities, positive measures aim at substantive equality and equality of outcome. Such notions of equality are based on the idea that it is appropriate to deviate from formal equality (equal opportunity) in order to make the position of the underrepresented group better (Nousiainen and Pylkkänen 2001: 260).

Concrete positive measures that have been used in the Nordic countries include positive action, including quotas, especially in Norway. In addition, states have relied on gender mainstreaming and different responsibilities that have been placed on employers and public authorities to promote gender equality in workplaces, in pay or in education (Nousiainen 2005). Positive measures then operate on the basis of a fundamentally different logic. They remove the responsibility from the individual and make it, for example, the employers’ duty

to change certain structures (e.g., working hours) that may put the underrepresented group at disadvantage (e.g., late meetings being difficult to attend due to care responsibilities).

In the Nordic countries too, both European soft and hard laws have shaped national policies and discourses, and have been used in different ways by domestic actors. Overall, the EU directives have moved the countries towards stronger provisions against discrimination.<sup>1</sup> The EU frameworks have also changed the gender equality discourse in these countries. Some of the subtle trends that have been identified in scholarly debates include the gender equality discourse becoming more technical, managerial and individual based (Brunila 2009), the discourse focusing more on protecting motherhood (Kantola and Nousiainen 2012) and moving away from the universality of welfare services because of EU funded local workplace specific gender equality projects (Brunila 2009; Eräranta 2012). These shifts are subtle and uneven, yet, may result in more fundamental changes in discourses and practices over time.

Despite these similarities, the Nordic countries have distinct gender profiles in relation to the institutionalization of gender policy, women's movement organization and ideological emphases placed on motherhood or liberty (Melby, Ravn and Carlsson-Wetterberg 2009: 5). Notwithstanding the differences, the Nordic gender equality discourse has been argued to suffer from similar shortcomings. The consequences of the ideational constructions of gender equality and its institutionalizations have been extensively explored. It has been argued that the highly developed social policies for parents have in fact reproduced gender segregation and inequality in the family and the labour market, among other things because more women than men tend to parental leaves and childcare leaves (Borchorst and Siim 2002: 93). The emphasis placed on social rights and welfare policy has resulted in women's bodily rights, for example, in relation to violence against women, receiving less attention (Kantola 2006; Lindvert 2002).

Whilst the idea of women-friendliness of the Nordic welfare states has been based on the premise of an idea of women's common and collective interests (Borchorst and Siim 2008: 209-210), it has become evident that Nordic gender policies have been only directed at some women (and men) and may in fact increase inequalities between women. Postcolonial critiques of Nordic welfare states and Nordic feminist practices and scholarship problematize the ways in which discourses on nationhood, belonging and welfare states construct categories such as immigrants (Mulinari et al. 2009: 5). Gender equality is at the centre of the debates on immigration and multiculturalism in these countries and helps to define who belongs to the welfare states (Mulinari et al. 2009: 5). In this process, the Nordic discourse on gender equality is constructed in opposition to these 'others'. For example in Denmark, there has been a turn to discuss gender inequality as a cultural problem prominent among

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<sup>1</sup> The Commission has in the past found the Danish transposition of the equal pay directive to be insufficient and the infringement procedure resulted in Denmark appearing before the Court. This was an example of a clash between the Nordic model of ensuring equal pay through collective agreements and the EU anti-discrimination model where the Court found that the Nordic model did not sufficiently ensure pay equity (Martinsen 2007: 552). The EU law also expanded the meaning of equal treatment and extended the rights of pregnant workers against dismissal and indirect discrimination in Denmark (Martinsen 2007: 552). Similar changes have taken place in Finland and Sweden after the countries became members in the 1990s, resulting in changes in the countries equality legislation (Holli and Kantola 2007; Nousiainen 2005; Olsson Blandy 2005).

immigrant minorities as opposed to majority Danes among whom it has already been achieved (Borchorst and Siim 2008: 215).

In conclusion, despite the differences between the Nordic countries, it is possible to discern a Nordic discourse on gender equality. This discourse has traditionally been based on a notion of gender equality that is advanced in public life with the help of welfare policies and positive measures. It has foregrounded gender and paid less attention to tackling inequalities in relation to the other bases. The position of anti-discrimination law has been weaker than in the Nordic countries, and as argued in more detail below, has been strongly influenced by the EU.

### **3. A European model of intersectionality**

National and EU anti-discrimination and equality laws have traditionally focused on single grounds resulting in gender equality laws and race discrimination acts. Especially in the Nordic countries, gender has been a privileged ground of protection and a target of equality policies. This unitary model is currently under challenge. The EU has emerged as a key actor in pushing for legal and political developments in the field of ‘multiple discrimination’ in Europe (Kantola 2010; Kantola and Nousiainen 2009, 2012; Lombardo and Verloo 2009). Questions about discrimination gained heightened salience after the enactment of the Amsterdam Treaty 1997 which gave powers to the Community to combat discrimination on the grounds of gender, race and ethnicity, religion and belief, age, disability and sexual orientation. Enshrined in Article 13 is an approach not just to tackling each of these grounds separately (vertical approach) but rather to looking into combating discrimination horizontally – across inequalities (Bell 2002: 385).

Feminist research about these developments is currently booming. It ranges from analyzing the EU’s approach to equality, intersectionality and multiple discrimination (Kantola and Nousiainen 2009, 2012; Lombardo and Verloo 2009) to evaluating its impact on ‘equality architectures’ in member states (Kriszan, Skjeie and Squires 2012; Verloo and Walby 2012) and to developing new analytical tools in relation to intersectionality and equality policy debates to assess these changes (Kriszan 2012; Walby, Strid and Armstrong 2012).

Whilst the EU policy emanates from many institutional sources that can sometimes contradict one another – for example, Parliament’s, Commission’s or European Court of Justice’s policies and rulings – feminist research has outlined the contours of EU policy on intersectionality and multiple discrimination. First, the EU constructs the phenomenon of intersecting inequalities as multiple discrimination rather than intersectionality (Kantola and Nousiainen 2009). As a concept, multiple discrimination recognizes that people can be discriminated on the basis of more than one identity category. However, analytically, in ‘multiple approaches’, categories matter equally in a predetermined relationship to each other whereby, for example, gender and race are treated as parallel phenomena (Hancock 2007: 67). In contrast to multiple approaches, intersectional approaches look to forms of inequality that are ‘routed through one another and which cannot be untangled to reveal a single cause’ (Grabham et al. 2009: 1).



Second, multiple discrimination prioritizes an anti-discrimination framework for tackling intersecting inequalities. A number of scholars now argue that this is too narrow and policy actors should, in fact, explore other tools, including positive measures, to tackle intersecting inequalities (Fredman 2008; Geddes and Guiraudon 2004: 346). As suggested above, with positive measures the initiative lies with policy-makers, service providers and employers. Change becomes systematic rather than random or ad hoc as the institutional and structural causes of inequality can be diagnosed and addressed collectively and institutionally. The duty to bring about change lies with those with the power and capacity to do so, not with the 'victim of discrimination' (Fredman 2008: 79-80).

Third, the EU is using soft law rather than binding directives to intervene in this field (Kantola and Nousiainen 2012). For example, the gender directives (as an example of hard law) continue to be single ground directives and do not contain provisions on multiple discrimination. The directives that deal with the other bases of inequality contain references to multiple discrimination acknowledging the ways in which gender intersects with race and ethnicity (Nielsen 2008: 33). Similarly, the equality directives do not require that equality laws be unified but the choice of the legislative means used in transposing directives is left to the member states. Furthermore, EU directives require that member states establish equality bodies to monitor only two grounds of discrimination, namely gender and race/ethnic origin (Bell 2008). Again, it is up to the member states to choose whether to monitor discrimination through one or several bodies. Soft law leaves a lot of room for national maneuver and interpretation.

There is no overall European pattern in terms of the direction to which countries are moving and equality institutions in the member states are characterized by a continued complexity ranging from separate to unitary equality bodies and laws with many refusing to fit this categorization (Krizsan, Skjeie and Squires 2012: 224; Verloo and Walby 2012). It is equally important to differentiate at the national level between the different institutions in the equality architecture that range from law enforcing and policy-making bodies to consultative bodies. These may all move in different directions in terms of institutionalizing intersectionality, which complicates the picture further. To capture some of this complexity Andrea Krizsan, Hege Skjeie and Judith Squires characterize different equality architectures and their attempts to deal with different inequalities as 'layered', 'hierarchical', 'dual', 'integrated' and 'anti-equality' (Krizsan, Skjeie and Squires 2012: 221-225). Importantly, the national solutions reflect different institutional legacies, discursive and political opportunity structures, and past hierarchies between different inequalities in the member states (Krizsan, Skjeie and Squires 2012: 210). Krizsan (2012) shows how hierarchical configurations, where other inequalities are added to existing gender institutions in an asymmetric way, seem to be the most dangerous in that they can fuel competition and conflict. Verloo and Walby (2012: 434) stress the importance of this finding because of its counter intuitiveness: 'keeping gender to some extent privileged in a multiple setting with other inequalities endangers gender because it adds conflicting dynamics'.

In sum, a particular EU model on multidimensional equality is discernible. In line with EU competencies that do not extend to social policy, it uses anti-discrimination law as a tool for dealing with multiple inequalities. The EU's soft law documents prioritize unified laws and

enforcement bodies for different bases of inequality in the name of efficiency and clarity. The final section of this article explores how these ideas and norms have been interpreted and implemented in the Nordic countries and institutionalized in legal frameworks.

#### **4. Europeanized equality policies in the Nordic countries**

Denmark, Finland, Norway and Sweden have reviewed or are currently in the process of reviewing their equality legislation and enforcement bodies. The political debate in the four countries has been characterized by the desire to harmonize anti-discrimination measures across different inequality grounds, to simplify complex legislation and to tackle multiple discrimination. The powers and the position of these equality agencies and laws as well as the position of intersectionality or multidimensional equality have been analyzed by scholars and practitioners (Borchorst and Siim 2012; Kantola and Nousiainen 2008; NIKK 2008; Skjeie and Langvasbråten 2009). What distinguishes this article from these previous ones is the aim to discuss these processes in the light of Europeanization of the Nordic gender equality discourse and to focus on the complex interplays between discourses and institutions and their effects. I will first describe the changes in the institutional, legal and policy contexts of inequality policies in the countries and then the discursive shifts that relate to these.

Whilst strong in gender policy, as discussed above, the Nordic countries have been less successful in outlawing discrimination on other bases, such as race and ethnicity, sexual orientation, age or disability. The two EU directives in the field, the Race Equality Directive (2000/43/EC) and the Employment Equality Directive (2000/78/EC)<sup>2</sup>, changed the countries' anti-discrimination laws. For example, Finland transposed the two directives by enacting a new Non-Discrimination Act (2004) that outlaws discrimination on the basis of ethnic or national origin, age, nationality, language, religion, opinion, views, state of health, disability, sexual orientation and 'other causes related to his or her person'. Denmark (1996), Norway (1998) and Sweden (1999) adopted anti-discrimination legislation banning discrimination on several grounds in the 1990s. However, Denmark enacted an Act on Ethnic Equal Treatment and established a new monitoring agency to implement EU directives, and Norway enacted the Act against Ethnic Discrimination in 2006. Sweden was an exception as it had legislation banning discrimination on disability, sexual orientation, ethnic origin and race in working life from the 1990s preceding the EU directives. The scope of this legislation was, however, extended with the transposition of the EU directives.

Previously, these three Nordic countries had dealt with these forms of discrimination through provisions in criminal law. The EU directives resulted in separate anti-discrimination acts. The move to recognize more grounds of inequality represented a clear strengthening of protection on the bases of sexual orientation, age and disability. The legislation in this field

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<sup>2</sup> Council Directive 2000/43/EC of 29 June 2000 implements the principle of equal treatment between persons irrespective of racial or ethnic origin and Council Directive 2000/78/EC of 27 November 2000 establishes a general framework for equal treatment in employment and occupation. OJ L 180, 19.7.2000, 22–26.

came later than, for example, in Britain where protection against discrimination on the basis of race and ethnicity dates back to the 1970s (Squires 2009). The architecture for enforcement agencies for race and ethnicity was expanded too in Denmark, Finland and Norway. Notably, the EU requires monitoring agencies only in relation to gender and race and ethnicity. Sweden was again the only Nordic country to have an Ombud for disabilities and sexual orientation before the equality reviews.

After broadening the bases of inequality from gender and race and ethnicity to others, the trend to consider them in conjunction with one another appeared. As argued above, in the EU this has taken the form of tackling ‘multiple discrimination’. In Norway, the Equality and Discrimination Ombud is the first enforcement body in the Nordic countries which is working against discrimination on several grounds (NIKK 2008: 63; Skjeie and Langvasbråten 2009). The Equality and Discrimination Ombud and the Equality Tribunal were established in 2006 enforcing all anti-discrimination and equality legislation, which covers gender, ethnicity, disability, language, religion, sexual orientation and age. The government is currently in the process of proposing a new joint anti-discrimination law that would replace the existing anti-discrimination and equality laws with a new anti-discrimination law (Borchorstand Siim 2012). Norway, whilst not a member state, has been argued to be ‘influenced by the EU’ in the new direction that it has taken in equality policy (NIKK 2008: 169). If Norway was the first to establish a body to deal with gender and other grounds, Sweden was the first Nordic country to enact a unified law. In Sweden, the new Anti-Discrimination Act came into force on 1 January 2009. It combats discrimination on seven grounds: sex, transgender identity or expression, ethnic origin, religion or other belief, disability, sexual orientation and age (Borchorst and Siim 2012). Of these transgender identity or expression is a new ground not mentioned in EC law.

In line with theories of Europeanization that do not argue for convergence, the equality reviews in Denmark and Finland have resulted in different reforms, although the political discourse has, in many ways, been similar to Norway and Sweden (Borchorst and Siim 2012). In Denmark, the Equality and Discrimination Ombud and the Equality Tribunal were established in 2006 to enforce all anti-discrimination and equality legislation, which covers gender, ethnicity, disability, language, religion, sexual orientation and age (Borchorst and Siim 2012). However, the Danish anti-discrimination legislation, which was split up in several Acts, was not changed. In line with the EU directives, the nine dimensions are all protected in the labour market, but only discrimination related to gender and ethnicity are covered outside this realm (Borchorst and Siim 2012). In Finland, a legislative reform process started in 2007 and the initial aim was to unify gender equality legislation with the anti-discrimination legislation on the other bases of inequality. In the government proposal, Finland is taking a distinct direction from the other three Nordic countries and maintaining its two track system. In other words, the Gender Equality Act and the new Anti-Discrimination Act as well as the ombudsmen overseeing their implementation would be kept separate.

The ideas that were put forward to both support and resist the unification of the equality legislation and bodies were strikingly similar in the four Nordic countries. Arguments for unification as articulated by governments and practitioners included that the work against discrimination would be strengthened and that it would receive more weight and credibility

(Borchorst and Siim 2012). The issue was also strongly framed within a human rights discourse that promoted similar rights to complain for all (Borchorst and Siim 2012; NIKK 2008: 51). Harmonization was also argued to represent efficiency in the sense of the NPM discourse; the unified laws and bodies were argued to be the most simple solution, they would result in the savings of administrative costs and a smaller state (Kantola and Nousiainen 2008). This illustrates both the regional – between the Nordic countries – and transnational flow of ideas. All reports and government proposals make reference to the EU which is in line with the theories of soft Europeanization, where EU norms can be used by political actors in particular ways.

Despite the similar discourses, the institutional adaptations were different in the four countries as illustrated above. Arguments against the unification that included challenging the similarity between the equalities, emphasizing the different roots, histories and institutional legacies of the inequality grounds were most successful in Finland (Kantola and Nousiainen 2008; Nousiainen 2012). The success can partly be explained by strong resistance towards unification by the trade unions and the women's movement.

In the process, the Nordic discourse on gender equality has been adapted to different degrees. First, it is evident that equality has become multidimensional in the Nordic countries. The previous hierarchy between the grounds where gender was the best protected, and ethnicity and race came next, has been re-evaluated and the other grounds of discrimination, for example, sexual orientation and disability, have been brought into the equality discourse. Some differences in protection do remain however. Sweden, for example, has made a differentiation between the other grounds and age offering a broader scope of protected areas for the grounds other than age (Borchorst and Siim 2012; NIKK 2008). In Finland, in contrast, gender remains separated from the other bases.

Although equality has become multidimensional, there is little evidence that institutional and legal convergence would represent a genuine engagement with intersectionality or even multiple discrimination. This is evidenced by the fact that the legal requirements for tackling multiple discrimination have been inadequately addressed. First, the scope of and the remedies need to be similar as to the grounds involved, otherwise it would difficult to address several grounds simultaneously (Kantola and Nousiainen 2009: 466). Second, there is an element of comparison in the definition of discrimination under EU law: 'one person is treated less favourably than another is' (definition of direct discrimination) or a person is 'put at particular disadvantage compared with other persons' (definition of indirect discrimination). Where several grounds are involved, a comparator is not easily found (Kantola and Nousiainen 2009: 466). In sum, these two issues need to be addressed in order to tackle multiple discrimination. Yet, the relevant proposals and acts in the four countries give few tools to tackle multiple discrimination in practice although the Finnish proposal discusses relaxing the comparator requirement for cases of multiple discrimination (Borchorst and Siim 2012).

A new stronger focus on anti-discrimination is also evident. Protection of individual rights is at the centre of these reforms. In Norway and Sweden, although positive measures have been extended to other bases of inequality in addition to gender, they have also been downgraded

(Borchorst and Siim 2012). For example, in Sweden, smaller companies were freed from the duty to draw up equality plans, a key tool for positive action and for ensuring equal pay. This tendency is further strengthened by the fact that the current EU approach reflects a human rights based model to equality bodies (Nousiainen 2008a). The Nordic tradition, in contrast, is based on the ombud type of bodies that have to be able to take proactive measures. Human rights bodies are responsible for presenting opinions, recommendations and reports and disseminate information and do research. An emphasis is placed on the independence of the bodies to ensure neutrality and objectivity. Nousiainen (2008a) argues that the prevalence of these human rights norms for equality bodies in the EU downplays the features that are typical for equality bodies entrusted with social policy aims and proactive promotion of equality. Independence from government may be important for monitoring purposes, but less useful when pushing for positive action or gender mainstreaming (Nousiainen 2008a).

## **Conclusion**

The case of ‘institutionalizing intersectionality’ or moving towards a multidimensional equality discourse with a focus on multiple discrimination highlights the ongoing changes in the Nordic gender equality discourse. The EU plays a key role in setting the discursive agenda. Europeanization is traditionally conceived of as taking place through hard law, namely the EU directives that need to be transposed to national legislation. Transposition of the two directives on race and ethnicity, religion and belief, age, sexual orientation and disability, did indeed expand the equalities framework and strengthen protection on grounds other than gender in the Nordic countries. However, soft Europeanization in relation to tackling multiple discrimination illustrates the role of ideas and norms in transforming policy frameworks.

The Nordic discourse that used to focus primarily on gender and on using positive measures and welfare policies to advance gender equality is now moving towards a new practice of focusing on multiple groups and using anti-discrimination law in tackling inequalities. Whilst positive action and social welfare approaches could potentially exist side by side with multiple discrimination with the two mutually strengthening one another, this article has suggested that this is leading to a heightened focus on the individual and her rights, as opposed to structures and employers’ or public authorities’ responsibilities to remove barriers to equality. Gender equality is also in the process of judicialization where it is moving from the sphere of politics to that of law. Crucially, the article has illustrated that similar discourses can, in the end, lead to different institutional practices as a result of political contestation, patterns of resistance to new discourses, interest group mobilization and the embeddedness of national institutions. The institutional solutions in the four countries have indeed been different with Sweden and Norway unifying equality and anti-discrimination laws and bodies, while Denmark has witnessed the unification of institutions but not law, and Finland has maintained its two track system.

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