



EU antidiscrimination policy and its unintended domestic consequences: The institutionalization of multiple equalities in Italy

Emanuela Lombardo ^{a,*}, Elena Del Giorgio ^b

^a Madrid Complutense University, Spain

^b University of Milan, Italy

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SYNOPSIS

From the adoption of Article 13 of the Treaty of Amsterdam and the 2000/43/EC and 2000/78/EC directives, the European Union (EU) has started to develop antidiscrimination policies that address multiple inequalities. Yet, as the analysis of the institutionalization of multiple equalities in Italy shows, the domestic implementation of EU antidiscrimination directives can produce unintended consequences. The paper analyses the machinery and legislation introduced in Italy to implement the EU antidiscrimination directives, with a focus on ethnicity and sexual orientation. It argues that while the EU has opened opportunities for the institutionalisation of equality policies in Italy, national gatekeepers and political dynamics have affected the type of institutionalization that occurred, provoking unintended consequences, such as resistance to implement EU antidiscrimination directive or the twisting of the latter into discriminatory provisions. We conclude by exploring some of the reasons for the unintended consequences of EU policies to institutionalise multiple equalities in Italy.

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Introduction

Italian gender equality policies developed in the nineties due to a favourable juncture of European Union (EU) influence and national political factors. One decade later, through Article 13 of the Treaty of Amsterdam and two implementing Directives (2000/43/EC and 2000/78/EC), the EU launched a multiple anti-discrimination approach to cover inequalities other than gender (race or ethnicity, disability, sexual orientation, age, religion or belief) and required the creation of race equality bodies.¹ What institutions have been established in Italy and what laws have been adopted to promote equality on the grounds not only of gender but also of ethnicity and sexual orientation, as the EU requires? What have been the unintended consequences of the Italian institutionalization of multiple equalities promoted by the EU? What domestic gatekeepers and political dynamics have played a role in this process of institutionalization? These are the

main questions asked in this article in which the idea of unintended consequences is related to how, in the process of transposition and implementation of EU policies by the member states, the results can be different and even opposite to the original intention of EU laws.

The context of analysis is Italy, a country marked by strong ideological divides along the political spectrum and by a consolidated and vital associative tradition, both of which offer opportunities and constraints in the political articulation of multiple inequalities. We analyse the state level, while other studies explore regional developments in the institutionalisation of multiple equalities (Palici di Suni, Mia, Valeria, & Laura, 2010). We argue that while the EU has opened opportunities for the development of equality policies and institutions that were not previously available in Italy, national gatekeepers and other political dynamics have affected the specific type of institutionalization that took place by provoking unintended consequences from those postulated by the EU antidiscrimination directives. In particular, 'unintended consequences' of EU policies in this article mean two different things: in the case of sexual orientation, unintended consequences refer to a

* Corresponding author.

faulty transposition of the EU antidiscrimination directive that paradoxically discriminated homosexuals, due to cultural and political aspects of the Italian context. In the case of race and ethnicity, EU unintended consequences refer not only to discriminatory policies through practices of institutional racism, but also to limited or even failed implementation. This implementation deficit, though common to other Member States and thus not only typical of Italy (Bell, 2008), can also be named as unintended consequence of EU policy since what the EU intended was the establishment of an antidiscrimination body that, unlike the Italian, acts independently and functions effectively.

For our methodology, apart from the analysis of secondary sources mainly from the literature on gender and politics (see next section), we have employed policy process analysis to trace when and how a particular equality issue appeared on the political agenda, who has contributed to the debate, who has promoted or blocked developments towards multiple inequality, and what documents were produced (Sutton, 1999). We have analysed policy documents on gender, ethnicity and sexual orientation such as legislative decrees and governmental policy documents, as well as documents produced by civil society. Finally, we have also conducted ten semi-structured interviews with key Italian institutional and civil society actors. This has allowed us to pay attention to the way in which both institutional and civil society actors intervened in policy processes of institutional change around equality that took place in the last decade and to uncover some of the dynamics which can help us to understand Italian developments in policies concerning ethnicity and sexual orientation inequalities.

The next section discusses the theoretical debates in which this paper is located, then introduces in the section [The institutionalization of gender equality in the Italian political context](#) the emergence of equality policies in the area of gender in order to contextualise the institutionalization of equality in Italy. The main focus, though, is not that of Italian gender policies and institutions, on which there is already an existing literature (see [Guadagnini & Donà, 2007](#)), but rather that of developments in the institutionalization of equality policies on race or ethnicity ([The difficult institutionalization of race and ethnicity inequalities in Italy: is that what the EU 'intended'?](#) section), and sexual orientation ([Using the EU 'anti-discrimination' directive to 'discriminate' homosexual people: the latest Berlusconi joke?](#) section). These are the areas where the EU has been especially influential in Italy and around which not only have most recent political activity and debates emerged, but also on which there is little scholarly work on the Italian case. In the section [Discussing the findings: why the EU antidiscrimination strategy in Italy can lead to unintended consequences](#) section, followed by the [Conclusions](#), we will discuss relevant factors and dynamics of the Italian institutionalization of multiple equalities in an attempt to understand why the shift towards a multiple approach to inequalities promoted by the EU is proving difficult to develop in Italy, often leading to unintended consequences.

Scholarly debates on the institutionalization of multiple equalities in Europe

The EU anti-discrimination strategy has broadened the institutional protection to inequalities other than gender,

creating new opportunities and resources for European citizens to deal with existing inequalities. Yet, this anti-discrimination strategy also has a number of limitations. Firstly, it merely prohibits actors from discriminating and requires institutions to react once a specific discrimination has appeared, rather than requiring political actors to actively promote equality, as other EU strategies such as positive actions and gender mainstreaming do ([Lombardo & Bustelo, 2012](#)). Secondly, being based on litigation, it treats inequalities as an individual rather than structural problem, not questioning the causes of inequality present in existing social structures ([Ferree, 2009](#); [Kantola & Nousiainen, 2009](#)). Thirdly, the possibility for discriminated people to claim their rights in courts is dependent on the judicial context and culture of each country. Finally, gender experts have criticized the EU integrated approach to tackling discrimination (treating all inequalities together) due to the poor attention it pays to the specific dynamics of each inequality ([Verloo, 2006](#)) or the dilution of gender into other social inequalities ([Stratigaki, 2008](#)).

However, despite these limitations, the EU anti-discrimination strategy has pushed Italy to institutionalise equalities previously less developed or ignored, such as sexual orientation and ethnicity. Political developments in the direction of a multiple inequalities approach, though being careful of the limitations that such an approach entails, are thus interesting to analyse due to their potential for improving people's rights and life opportunities. Nevertheless, the original intentions of the EU antidiscrimination provisions can be subverted during domestic transposition ([Bell, 2008](#)).

Due to the EU role as promoter of policies on multiple equality in Italy, as it was for gender policies ([Guadagnini & Donà, 2007](#); [Donà, 2006](#)), this paper has drawn on Europeanization theory both to understand the reasons for the creation of new equality bodies and legislation to comply with the EU law ([Radaelli, 2004](#); [Schmidt & Radaelli, 2004](#)). Europeanization studies on 'how Europe hits home' provide research on multiple inequalities in European contexts with explanatory factors concerning developments in the institutionalization of equality, not only in terms of member states' adaptation to EU norms, but also in terms of the opportunity structures that the EU opens for the use of EU norms by domestic political actors ([Börzel & Risse, 2003](#); [Woll & Jacquot, 2010](#)).

This paper is located within the theoretical and empirical literature on state feminism and feminist institutionalism in general ([Krook & Mackay, 2011](#); [McBride & Mazur, 2010](#); [Outshoorn & Kantola, 2007](#)), and the literature on the institutionalization of multiple equalities and its possible shift towards intersectionality in Europe in particular ([Krizsan, Skjeie and Squires, forthcoming](#); [Kantola & Nousiainen, 2009](#)). The literature on state feminism has shown that the analysis of gender equality bodies and their functioning is a key starting point for understanding what structural conditions of the equality machinery, of the broader context, and of the type of alliances between the women's policy agency and the feminist movement might favour more gender equal outcomes (see also [Squires, 2007](#)). [Rai \(2008\)](#) specifies five key elements for the effectiveness of equality institutions (it refers to gender bodies but can also be applied to other equality agencies) in producing more equal outcomes: First, location at a high level within the decision-making hierarchy and authority to influence government policy; second, clarity of mandate and functional

responsibility; third, links with civil society groups that support the advancement of women's rights; fourth, human and financial resources; and fifth, the accountability of the national machinery to the women's movement. These elements are considered in this analysis of the Italian case of institutionalization of equality policies, though with a slight revision of Rai's criteria that takes into account the criterion of independence of the body, which the EU requires to antidiscrimination institutions.

Scholarly work on the institutionalization of multiple equalities and intersectionality in Europe has developed in the first decade of 2000 to catch up with a political context that, due to the EU pressure, is rapidly changing at the institutional and civil society levels (see [Kantola & Nousiainen, 2009](#); [Lombardo & Verloo, 2009](#)). [Bell \(2008\)](#) analyses the transposition of the EU anti-discrimination directives arguing that, while EU law may open a window of opportunities for legislating on the issue, the domestic context greatly influences the laws and institutions created and the use that civil society will make of the provisions. The UK has been a forerunner in evolving from specific to single equality bodies for addressing multiple inequalities, with different pros and cons for advancing the equality cause ([Squires, 2009](#)). Norway has recently created new institutions and legislation on multiple inequalities that challenge existing judicial practice towards intersectionality ([Skjeie & Langvasbraten, 2009](#)). Southern European countries show that the political treatment of multiple inequalities is increasingly developing in Portugal ([Alonso, 2009](#)), and that a good performance in gender equality policies, as in Spain, does not necessarily lead to an equally good attention to other inequalities ([Bustelo, 2009](#)).

A final theoretical reference that is considered in this study is Walby's conceptualisation of democracy as a key indicator of progress ([Walby, 2009: 178](#)). Comparative studies have associated democratic institutions and practices with a higher protection of equality and human rights ([Carey & Poe, 2004](#)). The promotion of equality, in Walby's theory, is related to the 'depth' of democracy in a specific context. Walby proposes ten indicators that help to grasp the depth of democracy in a given country, in a scale going from 'suffrage democracy', to 'presence democracy' (including a proportionate presence of underrepresented groups as women and minorities in parliament) and 'broad democracy' (democracy coinciding with the state control over public services rather than with their privatization, that would indicate 'the shrinking of the remit of the democratic polity' p. 184). The number of women in representative positions is then an important indicator of a broader concept of democracy. Among the indicators of what she names 'suffrage democracy' Walby includes, apart from the classical elements of free, fair, competitive, elections that take place in contexts where the freedom of speech, information, and association is safeguarded, also the absence of 'hereditary or unelected positions' and 'no powers of governance held by an additional non-democratic policy (e.g. organized religion)' ([Walby, 2009: 179](#)). In Walby's account, organized religions with institutionalized structures of governance and hierarchical (opposite to democratic) organizational practices, such as catholicism as represented by the Vatican, are types of polity and should be treated as such (the Vatican has embassies in all countries and is treated by the UN as if it were a state, the Pope's representative having a voice in UN world conference

on women). Organized religion, such as the Vatican can have 'significant powers of governance over significant aspects of people's lives' (p. 163) such as in matters of intimacy policy regulating 'sexuality, reproduction, marriage, and divorce' (p. 164). Given the situation of democracy in current Italy under the Berlusconi governments, where the 'public' is increasingly shrinking to the benefit of the 'private' interests of the prime minister, considering the low women's representation in Parliament and government, and due to the particular influence on Italian politics and society of the Vatican state located in the Italian capital city, Walby's theory of democracy is relevant in this analysis to deepen an understanding of the reasons for the unintended consequences of EU antidiscrimination policies in the Italian polity. A 'shrinking' democracy shows increasingly less attention to equality issues.

The analysis of the Italian case developed in this paper draws on these scholarly debates on the institutionalization of multiple equalities, state feminism, and Europeanization. It will take into account [Rai's \(2008\)](#) five preconditions for institutional effectiveness in producing more equal outcomes, as well as the criterion of body independence, to analyse how multiple inequalities have been institutionalised in Italy and thus to explore the extent to which the unintended consequences of EU antidiscrimination policies can be related to institutional and political factors of the Italian context. In addition, it will consider Walby's reflections on democracy as a key indicator of progress, which can contribute to further understand the specific Italian institutionalization of multiple equalities.

The institutionalization of gender equality in the Italian political context

Gender equality policy agencies were the first equality institutions to be developed in Italy in the 1980s and the 1990s. A brief analysis of their creation thus appears necessary to understand the institutional context in which developments in the political treatment of multiple inequalities have occurred in Italy.

The institutional framework for promoting equality that was developed in Italy has been affected by the Italian political culture characterized by a unique ideological cleavage between a strong catholic culture and an equally strong socialist one. With regard to the first, the presence of the Vatican at the very heart of Rome and the leading role played by its institutional ally – the Christian-Democratic party (DC) – during the so-called First Republic (1948–1994) has traditionally granted a strong influence to the catholic hierarchies in Italian politics and society. At the same time, the liberation from fascism and Nazi occupation and the presence in the political system for over 40 years of one of the strongest Communist Parties (PCI) in Western Europe has also affected Italian socio-political developments ([Ginsborg, 2006](#)).

This ideological divide has influenced the functioning of Italian equality policy in different ways. On the one hand, left and right wing sectors have made of familism (the ideological attribution of a central role to the traditional family and the reliance on the family as provider of social protection) one of the strongholds on which they could reach a political consensus ([Saraceno, 2003; 1994](#)). This consensual emphasis on familism has not been accompanied by an equally strong interest in the promotion of gender equality. Measures to promote families –

in a context marked by the presence of what former left-wing Minister for Equal Opportunities Barbara Pollastrini defines as 'political elites suffering from familism'² – have tended to perpetuate traditional gender roles of male breadwinners and female caregivers. On the other hand, however, the ideological cleavage is reflected in how the colour of the party in government affected the development of Italian gender and other equality policy agencies, with greater progress coming from centre-left than from centre-right governments (Guadagnini & Donà, 2007).

Gender equality policy agencies developed in Italy due to the EU and United Nations (UN) pressure and the favourable context created by centre-leftist governments in the 1980s and in the 1990s (Guadagnini & Donà, 2007). Although a variety of different gender agencies were established in Italy, we will refer here only to the Ministry for Rights and Equal Opportunities (EO), due to its role in the promotion of other equalities too which is of interest for this article. The Ministry for Rights and Equal Opportunities was created in 1996 under the centre-leftist Prodi government to follow both UN and EU guidelines to implement gender mainstreaming (Donà, 2006). Its tasks, performed by the Department of EO, are those of representing the Italian position on gender issues at the EU level, preparing governmental gender equality policy, and implementing the EU equality directives and gender mainstreaming. Despite the importance of creating a specific institution for the promotion of gender equality, the body is not sufficiently equipped for implementing its broad mandate. The weakness of the Ministry is reflected in the lack of financial autonomy and resources (in 2004 this Ministry without portfolio – according to Guadagnini & Donà, 2007 – was allocated 15,798,569 euros and 8–14 staff), the dependence of the Minister of equal opportunities on power relations with other members of Cabinet and the sexist culture that pervades Italian political institutions.

Despite the persistence of a strong male domination of political life in Italy across all parties (reflected in the low percentage, 11%, of women's representation in Parliament over the last decade, and in a political culture where the idea that women's main role is in the family rather than in the public, political and professional areas, is rather widespread; see Guadagnini & Donà, 2007), the centre-left governments have shown greater attention for gender issues and compliance with the EU gender equality directives. During the centre-leftist governments the gender equality machinery was established and consolidated and some of the most important gender equality laws were approved. Moreover, Ministers of equal opportunities from centre-leftist government such as Finocchiaro, Balbo, and Belillo, maintained relations with the feminist movement and opened up opportunities for feminist activists to enter the institutional scene (Lombardo & Sangiuliano, 2009). By contrast, the Minister for Equal Opportunities of the second Berlusconi centre-right government, Prestigiacomo, created a distance between the national equality institution and feminist activists (Guadagnini & Donà, 2007). Between 2006 and 2008, the Minister for Equal Opportunities of the Prodi government was Pollastrini who, despite not relying on direct experiences of feminist activism, proved receptive to the demands coming from both the women's and the gay movement. Finally, the Minister for Equal Opportunities appointed in the 2008 Berlusconi government, Carfagna, is a former television show

girl with personal ties to the prime minister and no experience in gender equality policies. Her mandate is marked by a general closure to civil society demands, silence concerning racial or ethnic discrimination and open resistance to policies concerning homosexual rights.

The difficult institutionalization of race and ethnicity inequalities in Italy: is that what the EU 'intended'?

While being traditionally a country of emigrants, Italy has faced from the nineties regular immigration flows. This has required new regulations to ban discrimination on the grounds of race and religion through law 40/1998. However, in other cases the way in which issues related with migration have been discussed shows a tension between domestic and EU commitments to anti-racism and the presence in government of restrictive, if not xenophobic, political positions towards migrants. This can help to explain gaps in the transposition and implementation of the EU anti-racist directive that were not intended in the EU antiracist policies.

In 2003 the Italian National Office against Racial Discrimination UNAR was established within the Department for Rights and Equal Opportunities within the Ministry of the same name through Decree 215 of 9 July 2003 to transpose the 2000/43/EC directive that obliged member states to designate a body for promoting equal treatment irrespective of race and ethnicity (see Table 1 for the main Italian legislation on race or ethnicity in relation to the EU directives). The main tasks of UNAR are to assist people who feel discriminated, to promote the adoption of positive actions by public and private actors, and to conduct research oriented at making policy recommendations.

UNAR shows institutional and structural constraints similar to those experienced in the area of gender by the Department for Rights and EO that hosts it (Donà, 2007). Its financial (2,035,357 Euros per year) and human resources (13 permanent staff and 5 experts) limit the possibility to provide effective legal assistance to victims of discrimination (Guadagnini & Donà, 2007). Moreover, UNAR can 'promote informal conciliatory meetings and propose solutions for the removal of discriminatory situations' (Art 2 215/2003 Decree), conduct an investigation and ask actors to provide case documentation, but it cannot oblige them to do so. UNAR's interventions 'are usually considered as soft law, whose effectiveness depends on the capacity of provoking voluntary adhesive behaviours' (UNAR (Ufficio Nazionale Antidiscriminazioni Razziali), 2008, p. 16) or 'moral suasion'.³ Thus not only resource but also procedural constraints limit UNAR's capacity for solving cases of race discrimination that the ACLI (Italian Associations of Christian Workers) experts collaborating with the body report to the agency.

The establishment of UNAR was welcomed by civil society organizations that work against racism.⁴ However, the analysis of the antidiscrimination body's formal and substantive functioning reveals an incorrect transposition and a limited implementation of the 2000/43 EC directive.

Incorrect transposition of the 2000/43/EC Directive: the burden of the proof on the victim

The analysis of the way in which European Directive 2000/43 was transposed in Italy helps understanding some of the reasons for poor implementation. Until 2008, the possibility

Table 1

Italian legislative measures in relation to EU directives: race/ethnicity and sexual orientation.

Inequality	EU directive	Italy transposition	Correct transposition?	Italian revision
Race or ethnicity	2000/43/EC: equal treatment on ground of racial or ethnic origins	Legislative decree 215 of 9.07.2003	Incorrect transposition EC 2005 Infringement Procedure n.2358	Revised Article 8 of Law Decree 59/2008 now including reversal of burden of proof in cases of race discrimination
Race or ethnicity	2000/43/EC: antidiscrimination body on ground of racial or ethnic origins (independence)	UNAR creation through Legislative decree 215 of 9.07.2003	Incorrect transposition: lack of independence	–
Sexual orientation	2000/78/EC equal treatment in employment and training on ground of age, religion or belief, disability, and sexual orientation	Legislative decree 216 of 09.07.2003	Incorrect and faulty (discriminatory) transposition	–
Sexual orientation	–	Commission for rights and equal opportunities of LGBT 03.06.07: not operational	–	–

for victims of obtaining a positive outcome from legal proceedings was restricted by the incorrect Italian transposition of the burden of the proof within the Directive. Whilst Art. 8 of the 2000/43 Directive explicitly assigned to the respondent the task of demonstrating the absence of discrimination, the Italian legislator did not invert the burden of the proof thus leaving de facto the victim in charge of collecting proof about the existence of discrimination. As an UNAR expert explained, placing the burden of the proof on the claimant hinders the possibility of collecting proof against a potential discriminating employer, as 'what colleague would testify against her or his employer?'.⁵ The breach of the EU Directive led the European Commission to initiate in 2005 an infringement procedure against Italy (Infringement Procedure n. 2358. See [Bencini, Cerretelli, & ENAR \(European Network Against Racism\), 2008](#)). This finally moved the Italian government to adapt domestic legislation to the European one through a revised Article 8 of Law Decree 59/2008 which now includes the reversal of the burden of the proof in cases of race discrimination.

The 2000/43/EC Directive, moreover, requires anti-racist bodies to be independent. However, in Italy, UNAR was set up as a branch of the Department for Rights and Equal Opportunities within the Presidency of the Council of Minister, and UNAR's Director, according to the Italian's transposition law (Art. 7 215/2003 Decree), is nominated by the Prime Minister. The anti-racist body is thus not in a position to work autonomously and to operate independently, as European Directive 2000/43/EC prescribes.

Furthermore, the EU supported the development of an integrated approach to multiple inequalities and the creation of single equality bodies to tackle different inequalities. Yet, in Italy, until 2010 there were very few signs of implementation of an integrated approach to inequalities: no practices of actual coordination between the gender and antiracist body were detected and UNAR had no internal resources (offices, experts) to deal with forms of discrimination other than race/ethnicity.

Limited implementation and 'institutional racism'

While the EU's intervention was crucial to open opportunities for a more effective implementation of the anti-

discrimination norm in Italy, several factors actually led to limited implementation and even 'institutional racism'.⁶ On the legal side, the little jurisprudence on race or ethnicity is an important obstacle to assess the implementation of UNAR's activities and the judicial protection UNAR exercises against race discrimination in Italy ([UNAR \(Ufficio Nazionale Antidiscriminazioni Razziali\), 2008, p. 68](#)). Since very few legal proceedings leading to sentences have been activated since UNAR's creation, anti-discrimination norms on race and ethnicity have *de facto* barely entered Italian legal culture.⁷ One of the main reasons for this lack of jurisprudence – besides, until 2008, the persistence of the burden of the proof on the claimant – lies in the fact that in civil procedures the very initiative to start a legal action is mainly left to the victim of discrimination. UNAR, on its part, is not entitled to sue as a juridical subject. All the agency can do is 'to accompany the victims through the courts in the case they voluntarily opt for this solution' by offering support, advice and official documentation to the judge ([UNAR \(Ufficio Nazionale Antidiscriminazioni Razziali\), 2008, p. 16](#)).

To facilitate victims' recourse to legal means, however, Decree 215/2003 permits specific third-parties to start legal action 'in the name, on behalf, and in support of' the discriminated person. Associations that are included in the UNAR National Register of NGOs (456 organisations registered by 2010) have a right to initiate a legal action. Nevertheless, NGOs have been reluctant to use this tool both because they often lack specific legal competences and because they cannot bear the legal costs ([UNAR \(Ufficio Nazionale Antidiscriminazioni Razziali\), 2008](#)). The result is that in most cases the initiative and costs of a legal action are left to the discriminated person.

The assessment of the implementation of antidiscrimination norms is also hindered by the fact that there was a gap of nine months between the last UNAR Director (who left the office in September 2008) and the new director appointed by the prime minister in May 2009. This means that for months judicial proceedings could only partially be activated since there was nobody in charge to sign official documents, coordinate institutional actions, and, more generally, guarantee operational effectiveness on the part of the antidiscrimination body.⁸

With regard to the aims and independence of UNAR, in order to improve the implementation of EU antidiscrimination policies, Italian anti-racist experts and senators of the centre-left Democratic Party (in opposition) – including the former head of the Department for Equal Opportunities Della Monica – have increasingly proposed institutional reform of the antidiscrimination body in line with EU guidelines both to strengthen the protection of Human Rights through a transversal institutional approach and to avoid the risks of ‘closeness to politics’.⁹ For instance, UNAR experts suggested already in 2007 the creation of a single equality body with transversal competencies and an even level of protection for inequalities of race, religion, sexual orientation, disability and age (UNAR, 2008). ENAR (Bencini et al., 2008) has proposed appointing an independent director and removing the body from under the Department for Rights and Equal Opportunities within the Presidency of the Council of Ministers. However, for three years none of these proposals was adopted, and after the 2008 general elections Senator Della Monica warned about UNAR’s total lack of independence under the Berlusconi government and denounced the persistent inactivity of the antidiscrimination agency. Without a Director during nine months and with five out of six legal experts dismissed, ‘UNAR has no possibility of action...’.¹⁰

Yet, starting from 2010, UNAR has begun restructuring its activities in order to favour an integrated approach to multiple inequalities. Within the project ‘Diversity as Value’ financed by the European Commission through the Progress Program, for instance, UNAR created a National Working Group gathering the main national NGOs that deal with different grounds of discriminations (age, religion, race/ethnicity, sexual orientation and disability) in order to create stable cooperation and embed antidiscrimination activities also at the local level (UNAR, 2011, p. 77). UNAR, moreover, is promoting studies on other grounds of discrimination than race (see the study commissioned to FISH Onlus on disability) and is creating back offices to deal with different forms of discrimination (UNAR, 2011, p. 86).

The problem related to UNAR’s lack of independence, however, persists and is particularly critical when ‘institutional racism’ is present in the everyday right-wing government’s policies – argues migration expert Naletto.¹¹ The Berlusconi government has adopted norms on security and on health policy that discriminating against migrants, such as a provision that obliges doctors to denounce to the police undocumented migrants who use the National Health Service and other norms included in the so-called ‘security package’ (Decree n. 11 of 23 February 2009). Racist and xenophobic political discourses of the Italian right-wing government and racist violence have been criticised in the 2011 Human Rights Watch Report.¹² In this context, the lack of independence of UNAR hinders the possibility of impartially monitoring and denouncing existing governmental racism.¹³

In conclusion, the EU impulse through the 2000/43/EC directive was crucial to formally introduce protection against racist discrimination on the Italian agenda, and lately, to favour the introduction of an integrated approach to multiple inequalities. However, domestic political dynamics and especially the resistance of the right-wing Berlusconi government to correctly transpose and effectively implement the EU anti-racist policy severely limited the ‘intended’ EU action against race and ethnicity discrimination.

Using the EU ‘anti-discrimination’ directive to ‘discriminate’ homosexual people: the latest Berlusconi joke?

Sexual orientation: a ‘frozen’ Commission and a discriminatory transposition of the EU directive

The political treatment of sexual orientation arrived on the Italian political agenda for the first time in 1999 under the centre-left D’Alema government. The demands of LGTB associations from the 1980s found allies in the centre-left Ministers for Equal Opportunities. Laura Balbo, thanks to the competence just assigned to the EO Ministry of implementing policies for overcoming discrimination against homosexuals, created in 1999 a Commission on equal rights and opportunities for homosexuals. Balbo’s work on two bills – one against discrimination on grounds of sexual orientation and the other on same-sex partnerships – was interrupted when D’Alema’s government fell in 2000 and a new centre-left government was created. The new Minister for EO Katia Belillo supported the work of the Commission and created a Subcommission for addressing the condition of transsexual and transgender persons. The Ministers’ political engagement with homosexual and transsexual people’s rights in Italy, however, did not bring legislative changes. The political instability of the centre-left majority in Parliament which led to the formation of three different governments in five years and the persisting cultural and institutional resistance to legislate on sexual orientation blocked any reform, with the exception of a change in the legislation that enabled homosexuals to become blood donors, while they were previously considered a risk category.

When the right-wing Berlusconi coalition won the general elections in 2001 with a strong majority, the new Minister for Equal Opportunities Prestigiacomo, a young entrepreneur with no contacts with the feminist or homosexual movement, cancelled the old Commission and created a new Study Group called sexuality, discrimination, and social integration. The name of the body – in which the term ‘homosexual’ disappeared – as well as its composition and tasks reveal a profound change in the institutional attitude towards sexual orientation. The Study Group focused on AIDS, was chaired by a doctor specialised in infectious diseases and HIV, and was composed of experts who had publicly expressed homophobic views. For these reasons, Arcigay, the biggest Italian homosexual association, declined the Minister’s offer of entering the Commission, and suggested three advisors.

The Commission’s experience, however, ended in 2003 due to a diplomatic crisis between the experts and the government. The three advisors resigned in July 2003 when the Berlusconi government adopted Decree 216/2003 through which Italy transposed the Directive 2000/78/EC that prohibits discrimination on grounds of sexual orientation (and belief, disability, and age) at work, which the experts considered non-compliant with the EU directive and discriminatory towards homosexuals (see Table 1 for the main Italian legislation on sexual orientation in relation to the EU directives). Paradoxically, the first time that the issue of sexual orientation was made visible on the Italian political agenda through the Decree transposing the 2000/78/EC directive, the right-wing government incorrectly transposes the directive by *discriminating* against homosexual workers where previously

the lack of legislation on the issue was de facto enabling access for homosexuals.¹⁴ According to LGTB associations and experts, the 216/2003 Decree only partially implements the directive and, in some of its articles, it twists the contents of the directive to the disadvantage of homosexual workers. The main critiques that experts and LGTB associations raise to the decree concern three aspects: the attribution of the burden of the proof upon the discriminated person, and not, as stated in the directive, upon the employer (DL 216/2003, art.4.4); the extension also to sexual orientation of the qualification criteria to consider in order to select personnel for the army, police, fire brigades, prison officers, and emergency services, which enables discrimination against homosexuals for this type of works (the directive only refers to age and disability as qualification criteria to consider that could allow reasonable discrimination in the selection of personnel for the mentioned positions), while previous Italian legislation did not preclude access for homosexuals (DL 216/2003, art.3, 2–3); and the restriction of the possibility of acting with regard to discriminations only to trade unions whereas the directive included also the possibility for civil society associations to intervene.¹⁵

Transposing the EU anti-discrimination directive to discriminate against homosexuals caused a 'divorce' between institutions and the gay movement until the end of the right-wing government legislature.¹⁶ The dialogue was reopened in 2006 when the left-wing Prodi coalition won the general elections with a weak majority and appointed Pollastrini as the new Minister of Equal Opportunities. Although the new Minister had no particular ties with the feminist and gay movements, she proved open to civil society demands and soon after appointment started working on the re-introduction of a Commission on homosexual rights.

The Commission for the rights and equal opportunities of lesbians, gays, bisexuals and transgender was established by Decree on 3rd of May 2007 within the Ministry for Equal Opportunities. It would work on 'sexual orientation' and 'gender identity', would be composed of seven experts nominated by the Minister and would have mainly consultative tasks. The Decree was designed to favour the dialogue with civil society: it stated that when the Commission gathers 'four representatives of transgender associations [should] participate as experts', and it created the 'Conference of Italian LGTB associations' as a 'body for the participation and the encounter and dialogue between social and institutional actors' (art. 8) chaired by the Minister that should gather twice a year.

The Commission was never operational, though, because the Decree implementing the body was drafted when the centre-left government had already resigned. Following the victory of the right-wing Berlusconi coalition in the April 2008 general elections, the new Minister for Equal Opportunities, Carfagna, proved to be not only unresponsive to civil society pressure for making the Commission operational but also resistant to support initiatives to tackle discrimination against sexual orientation. Indeed, one of the first measures introduced by Minister Carfagna was to withdraw the financial and symbolic support from the Ministry to the Gay Pride. Although during 2009 the Minister has become more open to dialogue with the homosexual movement and to supporting proposals against homophobia, this has not led

to the adoption of legislative or political measures against discrimination on grounds of sexuality.

Thus, although Italian machinery formally includes an anti-discriminations body on sexual orientation, the Commission is de facto 'frozen': it has no budget, it never met, and was never operational. As its President explains, whilst clearly avoiding any intervention on sexual orientation, the right-wing EO Minister so far did not 'dare' to formally close the Commission, a decision which would probably cause open protests and raise a debate, rather 'she decided to leave it there as an empty shell'.¹⁷

Cultural and political constraints to legislate on same-sex partnership in Italy

Whilst, at least formally, a body dealing with discrimination on the grounds of sexual orientation was created within the Department for Equal Opportunity, Italian legislation on the issue is conspicuously absent. The parliamentary debate that attracted most public attention concerned a bill to recognise civil unions and same sex partnerships' rights known as 'Dico', proposed in 2007 during the centre-left Prodi government ('DiCo' Bill on 'Rights and duties of people living together on stable basis', 19/02/2007). Cultural and political factors, however, worked against the approval of the bill.

The catholic ecclesiastic hierarchy strongly influenced the political debate in defence of the traditional heterosexual married family (Donà, 2009). Parties influenced by the catholic church referred in parliamentary debates to articles published by Pope Ratzinger to argue against bills to recognize homosexual partnership. Within the same parliamentary majority – composed by a fragile coalition among very different parties ranging from the centre party *La Margherita* to the Communist Party *Rifondazione Comunista* – the law proposal created profound tensions that eventually led to the prevalence of positions that favoured a traditional family culture. As MP De Biasi – who worked with the EO Minister Pollastrini – argued: 'why did the 'Dico' bill disappear from the agenda? We were ready but it was impossible with such a wide coalition...each time you took a decision somebody disagreed with it, either from the right or from the left...and the Italian church struggled against 'Dico'.¹⁸ The ecclesiastic mobilisation, the fragile governing coalition, and a general culture in favour of safeguarding the 'traditional family' blocked the approval of the so called 'Dico' law.

Structural political factors that also contributed to the failure of the 'Dico' bill relate to changes of the Italian political system following the "majoritarian shift" in the electoral law and the parties' spectrum from the beginning of the so-called Second Republic (Giuliani, 2008). Both the 13th (1996–2001) and 14th (2001–2006) legislature completed their five year mandate while very heterogeneous parties started to create fragile governmental coalitions always on the verge of political crisis due to internal disagreements on specific bills. This institutional development and the particularly aggressive political attitude expressed by the Berlusconi governments have created a general 'confrontational mood' between majority and opposition. This has promoted the need to develop cohesive behaviours internally to the parliamentary coalitions in order for the government not to fall. These cohesive behaviours have affected culturally

'sensitive laws' such as those concerning homosexuality. During the centre-left Prodi government that proposed the 'Dico' bill, the need to seek consensus within the coalition holding a weak majority has generally lowered the capacity of the Ministers to propose 'courageous policies'. This was particularly difficult for policies that challenged the traditional family, the defence of which has often been critical to reach political consensus in an ideologically divided context. Thus, a complex mix of political and cultural elements has prevented the approval of proposals on civil unions and homosexual partnerships in Italy.

Discussing the findings: why the EU antidiscrimination strategy in Italy can lead to unintended consequences

In this section we discuss the different institutional, political, and cultural reasons for the limited institutionalization of multiple inequalities in Italy that can help to understand why the EU antidiscrimination policies on ethnicity and sexual orientation had unintended domestic consequences. The most significant factors for understanding why multiple inequalities have not become institutionally embedded in the Italian political context, despite the EU influence, have to do with the institutional and political structure. The effectiveness of the main Italian equality body is rather limited when assessed according to both the EU requisite of independence for antidiscrimination institutions and Shirin Rai's (2008) five preconditions for the effectiveness of equality institutions introduced in the section [Scholarly debates on the institutionalization of multiple equalities in Europe](#) section (high institutional location and authority to influence government policy; clarity of mandate and functional responsibility; links with civil society; human and financial resources; and accountability of the national machinery to the women's movement).

The Italian Ministry for Rights and Equal Opportunities, which deals with equality policies on gender, race/ethnicity, and sexual orientation (and from 2010 it is beginning to work on age, disability, sexual orientation, and religion), is highly located as it depends directly on the Presidency. However, the not autonomous status of the body does not favour authority to influence government policy. The Italian Ministry of EO has a broad executive mandate. However, the lack of financial autonomy and the limited financial and human resources are severe restrictions to the possibility of implementing the mandate. In order to coordinate initiatives the Ministry of EO must rely on the availability of other Ministries, which varies with the government situation. As concerns clarity of functional responsibility, this is also limited by the fact that the EO Ministry's activities highly depend on the type of governmental responsibilities which are assigned to the Minister by the different cabinet presidents. This weak structure makes the Ministry of EO particularly vulnerable to government changes, a factor that has greatly affected continuity and consistency of equality policy, considering the unstable Italian political system. Also interaction with civil society and accountability of machinery in Italy has proved to be dependent on government change. Since there are no institutionalised channels for consultation, the relationship varies according to the political will of the Minister of EO and of the government, with centre-left governments being more inclusive than centre-right ones.

The European Union had a tremendous impact on placing equality issues on the Italian political agenda for gender, ethnicity, and sexual orientation, as the legislation transposing EU directives shows. It was influential in the establishment of the Ministry for Rights and Equal Opportunities in 1996 to deal with gender equality, and was again behind the creation in 2003 of the anti-racist UNAR body. It was less influential in the formal creation of a body on sexual orientation, which was moved by domestic dynamics of civil society pressure and left-wing government's political will. Binding instruments like EU directives have been effective in obliging unwilling Italian institutional actors to transpose antidiscrimination legislation. Berlusconi's government had finally to introduce the reversal of the burden of the proof in its anti-racist Decree in 2008 after the Commission initiated an infringement procedure against it. Yet, the fact that there is no EU monitoring of implementation of directives makes it possible, in political contexts like the Italian, to formally maintain agencies such as UNAR but de facto emptying them by not operationalising them. The scarce jurisprudence on anti-discrimination, further limited by an incorrect transposition that left the burden of the proof on the discriminated person, also shows a poor implementation of EU anti-discrimination legislation. These findings suggest that the institutionalization of multiple inequalities also requires monitoring of the implementation of equality bodies by actors external to the government.

Walby's (2009) theory of the depth of democracy discussed in the section [Scholarly debates on the institutionalization of multiple equalities in Europe](#) section also supports the idea that the low state of democracy under the Berlusconi governments is another factor that can explain the difficult institutionalisation of multiple equalities in Italy. This limited democracy (Morlino, 2003) is testified, among other things, by the monopoly of ideological, economic and political powers into the hands of the cabinet president, the *de facto* increase in executive powers through the routinised use of legislation by decrees which progressively disempowers the Parliament, a personalistic political style that appears in the approval of laws *ad personam*, and the limitation of free speech and concentration of media ownership (90% of broadcasting media privately owned by the prime minister) that has moved Italy in 2009 into the 'Partly Free category' of Freedom of the Press rankings of [Freedom House \(2009\)](#).

Cultural factors also contribute to understanding the reasons for the difficult institutionalization of Italian equality policies. Cultural factors interacting with the Italian political system have hindered the articulation of consistent equality policies even in left-oriented parties that have generally been more proactive towards equality. A widespread culture of familism, often used to reach political consensus, and the strong interference of the catholic ecclesiastic hierarchy in Italian political affairs (another sign of the thin depth of Italian democracy; see Walby, 2009), have negatively affected the development of equality policies in Italy. The difficulty for the centre-left majority to reach consensus within wide party coalitions that included both left and right-wing positions, in the context of a political system shifting towards majority, has blocked the adoption of progressive policy proposals especially on more sensitive issues, such as homosexual and partnership rights, which challenge the traditional family.

The institutional, political, and cultural factors discussed here can help us to understand why the EU antidiscrimination policies on ethnicity and sexual orientation had unintended domestic consequences in Italy, leading in some cases to discriminatory biases in the form of institutional racism or resistance to legislate on sexual orientation, and in other cases to limited or even failed implementation.

Conclusions

Under EU pressure and the occasional governmental window of opportunities from centre-left coalitions, Italy has begun to institutionalise multiple equalities which had formerly obtained little relevance on the political agenda. The EU anti-discrimination strategy has greatly influenced the development of equality policies on race or ethnicity and sexual orientation in Italy, legitimating equality advocates in their demands or forcing unwilling governments to correctly transpose the EU directives. However, domestic political actors have been key gatekeepers in the process of transposing and implementing the antidiscrimination provisions on race and sexuality, sometimes determining outcomes opposite to those intended by the EU anti-discrimination directives. Indeed, in some cases the EU anti-discrimination norms have been twisted into discriminatory provisions or actively resisted by the Italian Berlusconi government.

Recent developments in the institutionalisation of multiple equalities at the regional level (Palici di Suni et al., 2010), due to the new powers granted to the regions from 2001, show greater progress than at the national level, with Northern regions enhancing the protection against discrimination on multiple grounds. For this reason, Palici di Suni et al. (2010) argue that some of the constraints and gatekeepers identified at the national level can be overcome at the regional level. However, despite the promising results in terms of the protection of inequalities in regional contexts such as Piedmont or Tuscany, further comparative analyses are needed to explore the extent to which the existing regional disparities between the North and the South of Italy might generate un/even results in the regional implementation of an antidiscrimination strategy.

In conclusion, although new inequalities have entered the Italian national political agenda in the first decade of 2000, the way in which they have been addressed and regulated shows little evidence of an effective implementation of EU anti-discrimination measures. Rather, right-wing governmental action to transpose the EU anti-discrimination directives has sometimes revealed a lack of political will to promote equality if not a resistance to the discourse of anti-discrimination. While Italy is not the only case of limited implementation of EU antidiscrimination directives among EU member states (Bell, 2008), Italian antidiscrimination institutions, compared to other Southern member states, have proved particularly inefficient or faulty in transposing and implementing EU antidiscrimination legislation (Lombardo & Bustelo, 2012). The ideological divide between left and right can partially help to understand the reasons for this limited institutionalization of multiple equalities in Italy. The other part of the story is the difficulty encountered within the leftist and more progressive political spectrum to articulate consistent equality policies in different areas. A widespread culture of familism and the strong interference of the catholic ecclesiastic hierarchy in

Italian political affairs are relevant factors in understanding the difficult implementation of EU anti-discrimination policies. Finally, the limits of Italian democracy under the Berlusconi governments have added yet another constraint to the implementation of the antidiscrimination directives as intended to enhance the protection of people from multiple discriminations. If the EU wants to achieve its 'intended' objectives, the monitoring of the implementation of antidiscrimination policies in the member states appears necessary not only to ensure that equality policies are put into practice and equality bodies are actually working but also, most importantly, to avoid that domestic actors dare twist an EU anti-discrimination policy into one that discriminates against the very subjects it should protect.

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End Notes

¹ The two directives, based on Article 13 of the Treaty of Amsterdam, prescribe member states to implement the principle of equal treatment between persons irrespective of racial or ethnic (2000/43/EC), and the principle of equal treatment in employment and training irrespective of age, religion or belief, disability, and sexual orientation (2000/78/EC). The EU prescription for member states to create equality machinery exists so far only for race and ethnicity (through Directive 2000/43/EC) and for gender (through Directives 2002/73/EC and 2004/113/EC), which has been discussed as a matter of disparity established by the EU directives among the different grounds of inequality covered under Article 13 (Bell, 2002; Kantola & Nousiainen, 2009; Lombardo & Verloo, 2009).

² Interview with MP Barbara Pollastrini (PD), Rome, 25/02/2009.

³ Interview with Marianna Borroni, ACLI Expert and UNAR Junior Expert, Rome, 26/02/2009.

⁴ See European Network Against Racism leaflet, <http://digilander.libero.it/enarit/>.

⁵ Interview with Marianna Borroni.

⁶ Interview with Grazia Naletto, Immigration expert, Associazione Lunaria, Rome, 23/02/2009.

⁷ Among the few but important positive legal outcomes obtained with the help of UNAR/ACLI there is the ordinance of the 3rd of June 2008 by the Court of Florence which recognized a Tunisian citizen the right to obtain a taxi license. Interview with Pino Gulia ACLI Expert and UNAR Senior Expert,

20/06/2009.

⁸ Interview with Pino Gulia ACLI Expert and UNAR Senior Expert, 20/06/2009; Interview with Marianna Borroni.

⁹ Interview with Silvia Della Monica.

¹⁰ Interview with Grazia Naletto.

¹¹ See <http://www.hrw.org/en/node/95491>.

¹² Interview with Grazia Naletto.

¹³ Interview with Sergio Lo Giudice, Arcigay Honorary President, President of the Commission for the Rights and Equal Opportunities of Lesbians, Gay, Bisexuals and Transgender, Bologna, 27/02/2009.

¹⁴ Interview with Sergio Lo Giudice, Arcigay Honorary President, President of the Commission for the Rights and Equal Opportunities of Lesbians, Gay, Bisexuals and Transgender, Bologna, 27/02/2009.

¹⁵ Interview with Sergio Lo Giudice.

¹⁶ Interview with Sergio Lo Giudice.

¹⁷ Interview with Sergio Lo Giudice.

¹⁸ Interview with MP Emilia De Biasi (PD), Rome, 26/02/2009.

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Emanuela Lombardo, PhD in Politics, is Lecturer at the Department of Political Science and Administration II of Madrid Complutense University, Spain. She has worked as *Ramón y Cajal* and senior researcher in the European project QUING (Quality in Gender Equality Policies, FP6 2006–2011, www.quing.eu). Her areas of expertise are gender equality policies particularly in the European Union, Spain, and Italy. On these issues she has published articles in journals such as *European Journal of Women's Studies*, *Social Politics*, *Feminist Review*, *Journal of Women Politics and Policy*, *Women's Studies International Forum*, *International Feminist Journal of Politics*, *Citizenship Studies*, as well as chapters in edited volumes. She is co-editor with Maxime Forest of the volume *The Europeanization of Gender Equality Policies. A Discursive-sociological Approach* (Palgrave 2012). She teaches undergraduate courses on comparative politics and master and PhD courses on gender and politics. For further information see the web <http://www.ucm.es/info/target/>.

Elena Del Giorgio, PhD in Politics, has worked as researcher responsible for the Italian case within the UCM Madrid team of the QUING European research Project aiming at evaluating, in comparative perspective, the quality of gender + equality policies in the EU (www.quing.eu). In the past 5 years she has mainly worked on the women's movement in Europe at the European University Institute of Florence (Italy) where she has defended in 2010 her PhD on contemporary feminist organisations in Berlin, Milan and Paris. She graduated in political science at the Bologna University and subsequently worked in the Department of political and social sciences of the University Cesare Alfieri of Florence. Her main research interests are: general political sociology, social movements, gender + equality policies, Italian politics and political system.