

EU-Policies and Fertility: The Emergence of Fertility Related Family Policies at the Supra-National Level

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Abstract: The paper deals with fertility relevant policy initiatives at the European level. During the past decade the EU has set several initiatives concerning fertility issues. It is not clear whether these mark the emergence of a new policy field within the EU. To assess this issue we collected EU documents related to fertility relevant policy issues and quantified their development over time. We distinguished between binding and non-binding acts, and we analysed the key topics and frames of the EU documents collected in our dataset. The analysis shows that EU activities related to fertility relevant family policies have increased over time, both with respect to binding and non-binding initiatives. It further shows that the recent fertility-focused initiatives are embedded in policy frames and topics which to a large extent have been part of the core of European Union politics since its onset.

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1. Introduction

During the past two decades political and public discourses about family policies in Europe have increasingly been linked to fertility issues, in particular to the low fertility rates in many European countries. The number of European countries which state that their fertility levels are too low has risen substantially, as has the argument that low fertility rates will have negative consequences for Europe's economic development and the sustainability of its welfare states and its societies. More and more countries admit that they have or consider policy measures to raise fertility (Neyer 2012; Marshall 2015). In several countries, low fertility has become an explicit means of promoting changes in family policies (Hantrais and Letablier 1996; Hantrais 1999; Letablier 2008; Henninger et al. 2008).

Implicitly or explicitly, fertility issues have also been addressed by the European Union. The suggestions of the Barcelona Summit to increase childcare facilities in EU-member states (Presidency Conclusion 2002), the public consultation launched by the European Commission with the Green Paper "Confronting demographic change: a new solidarity between the generations" (European Commission 2005), the publication of its results with the Communication "The demographic future of Europe - from challenge to opportunity" (European Commission 2006), the establishment of an expert group on demographic issues (European Commission 2007), the biennial European demography forum and European demography report are signs of this development. These initiatives may be a sign of the emergence of a new policy area within the European Union. For, during the past decades the European Union has expanded its policy portfolio beyond the areas which constitute the core fields of European Union policy making. These expansions have been partly driven by issues which have become of growing concerns to the member states and might therefore be dealt with at the European level rather than at the member state level. As regards policies concerning family and fertility issue, the legal competence to handle these matters lie mainly with the member states. The Treaties of the European Union do not bestow the EU with the authority to legislate in these areas directly. It may, however, make use of other modes of governance, especially the Open Method of Coordination, to steer policy directions. In either case, to act directly or indirectly, it has to link its suggestions to areas of EU competences, such as its employment and gender equality strategies. The latter comprise, for example, the reconciliation of paid work and family life, gender equality, and childcare

(as in the communication by the European Commission 2006; see also: Jacquot 2013; Jacquot et al. 2010; Hantrais 1999, 2007). In turn, issues such as employment and gender equality have been essential in EU-initiatives to further policies which are considered to affect childbearing and fertility development (e.g., parental-leave directive).

Although the recent fertility-related initiatives of the EU have received attention by demographers and family policy researchers (e.g., Population and Development Review 2006; McGlynn 2006), there exists no systematic overview over the development of such initiatives. It is therefore not possible to assess whether the recent initiatives constitute the emergence of a new field of policy agenda in the EU or whether the initiatives comprise and unify policy lines long pursued by the European Union under a new perspective. There exists also no study that examines the types of fertility-related initiatives, i.e., whether an initiative takes the form of a legally binding norm, which must be adopted by the member states, or whether it belongs to the “soft”, non-binding measures, which suggest policy directions to EU-member states. Such legal aspects are relevant to determine the range and the consequences of the initiatives. Finally, there exists no study which explores the occurrence of fertility-related policy issues over time. Since childbearing decisions may be shaped by a variety of different policies, like parental-leave policies, employment policies or gender policies, the pattern of occurrence of policy initiative may shed light on the extent to which fertility relevant issues have been considered within and across different policy realms.

In this paper, we provide a first overview over fertility-related initiatives at the European Union level. We make use of a database which we established to document and explore European Union activities in the area of family related policies. In this paper concentrate on aspects which are considered to influence fertility. These cover policies directly related to childbearing, such as maternity leave, parental leave, childcare, as well as aspects which are considered to affect fertility indirectly, such as the reconciliation of work and family, gender equality, equal opportunities, working time, and so forth. We also include issues which refer to fertility in a broader sense and provide a framing for fertility-related policy initiatives, such family and demographic issues. In the following sections we first outline the relevance of the European Union for family and fertility related policies; we then briefly describe our data and the method before presenting and summarizing the results of our quantitative analysis.

2. Relevance of the European Union in the area family and fertility related policies in Europe

Since the Treaty of Rome (1957) and the creation of the European Economic Community (1957), the European Union has not only expanded from six countries to now 28 member states; it has also acquired more power to influence the member states and their policies (Nugent 2006; McCormick 2011). Four aspects are important for our study and for understanding the impact that the European Union has on family policies and on fertility issues in member states: First, the European Union can define standards and pass legally binding norms that have to be met by or implemented into the national laws of the member states. This can be done through two channels: The treaties of the European Union set normative standards which member states are obliged to observe in their legislation. For example, the Treaty of Rome introduced the principle of equal pay of women and men and thus set the basis for the expansion of the gender equality principles in subsequent treaties and the implementation of gender equality in national laws. The legally binding norms are also set through directives which must be implemented in the member states. For example, the parental leave directive (Council Directive 96/34/EC of 3 June 1996) granted women and men an individual right to a parental leave of at least three months (and stipulated other conditions with regard to this parental leave). Member states which did not have parental leave measures that fulfilled at least these requirements had to adapt their measures or implement EU-conforming regulations (Falkner et al. 2005). As a consequence, all EU member states now have an individual-rights based parental leave of at least three months.

Second, the European Union has also a normative and guiding function beyond its power to set legally binding norms. Recommendations, opinions, green papers, white papers, communications, action programmes and other non-legally binding documents set normative standards or make suggestions regarding policies and policy directions which member states should take. For example, the Barcelona summit proposed that member states increase their childcare facilities to provide childcare by 2010 to at least 33% of children under the age of three and to at least 90% of children aged three to mandatory school entry age. Although in 2010 these goals were still not in place in all member states, there has been progress in the expansion of childcare provision in member states since 2002 due the Barcelona target (European Commission 2013). The European Union can thus contribute to or facilitate the development of family policies in member states.

Third, through the European Union cross-national exchange on issues relevant to the member states and the EU (e.g., low fertility) on policies and policy directions has been institutionalized. Previously mostly bilateral exchange has been extended to include all member states. The institutionalization is either formal, e.g., through the meetings of ministers, or informal (through expert groups, commissions, etc.). This may also lead to policy changes or adaptation of policies in individual member states (e.g., through adoption of “best practice” examples).

Fourth, the European Union usually frames its legally-binding and non-binding initiatives within wider policy aims. Such aims may be, e.g., to increase fertility, to tackle demographic aging, to promote gender equality, to raise female labour force participation, to support sustainability, to promote economic or inclusive growth. The over-arching aims indicate the broader changes which the European Union envisions to obtain through its legally binding or non-binding norms. As regards fertility, they thus embed and contextualize the fertility-related initiatives of the EU within a setting of EU goals and point to additional policy directions which member states may take.

3. Data and Methods

To document the development of fertility relevant EU-initiatives we put together a database on EU-initiatives in family-policy related areas which are considered relevant for fertility. To collect the data, we made use of the main databases of the EU that provide information on EU laws and on the legal processes of EU initiatives. To retrieve the relevant documents we used keywords covering the fertility relevant policy areas mentioned above (see Appendix for a description of the collection process). For the analysis of the development of such policy initiatives, our database covers policies which are directly related to childbearing (e.g., parental leave), policies which are considered to influence childbearing indirectly (e.g., reconciliation of work and family), as well as documents issues which refer to fertility in a broader sense, such as demographic development or low fertility (see above). To document the development over time, we tried to collect all available documents issued since the Treaty of Rome (1957). In order to avoid that closely related documents distort the results we only included the last, i.e. the final document (if several documents were published during

negotiations covering the same issue).¹ We classified all documents whether they are binding or non-binding. Binding documents comprise regulations, directives, and decisions (the latter only if they are of relevance to the EU as a whole); non-binding documents comprise all other documents issued by the EU, such as recommendations, resolutions, communications, reports, opinions (see: European Union Family Policy Dataset: Fertility-Related Family Policy Initiatives). To analyse the development of the policies and their content over time we furthermore systematized the policies on the basis of their core topic, such as gender equality, maternity, parental leave, etc. This allowed us to better assess the emergence, persistence or temporality of fertility related family issues and policies at the EU-level. In the following two sections, we present the key results on the development of the binding and non-binding initiatives, and on the development of the policy topics over time.

4. Results

4.1. The Development of fertility relevant policy initiatives

Many researchers have pointed out that during the past decades the political agenda of the European Union has broadened substantially. Its policy activities have expanded far beyond the core areas on which the common market was founded (Nugent 2010; Buonanno and Nugent 2013). This is also reflected in the increase in initiatives in our research area. In the 2000s the EU released about nine times as many documents related directly or indirectly to fertility relevant issues than in the 1970s. The increase has been particularly pronounced since the 1990s. This is partly related to the expansion of new modes of governance in the EU (Open Method of Coordination), which facilitated policy initiatives outside the EU's core policy areas (McGlynn 2006) or a shift in focus (Jacquot, Ledoux and Palier 2010). Yet, it is also a sign of the stronger engagement of the EU in areas which are not core economic, but which may affect the economic performance and the market development of the EU.

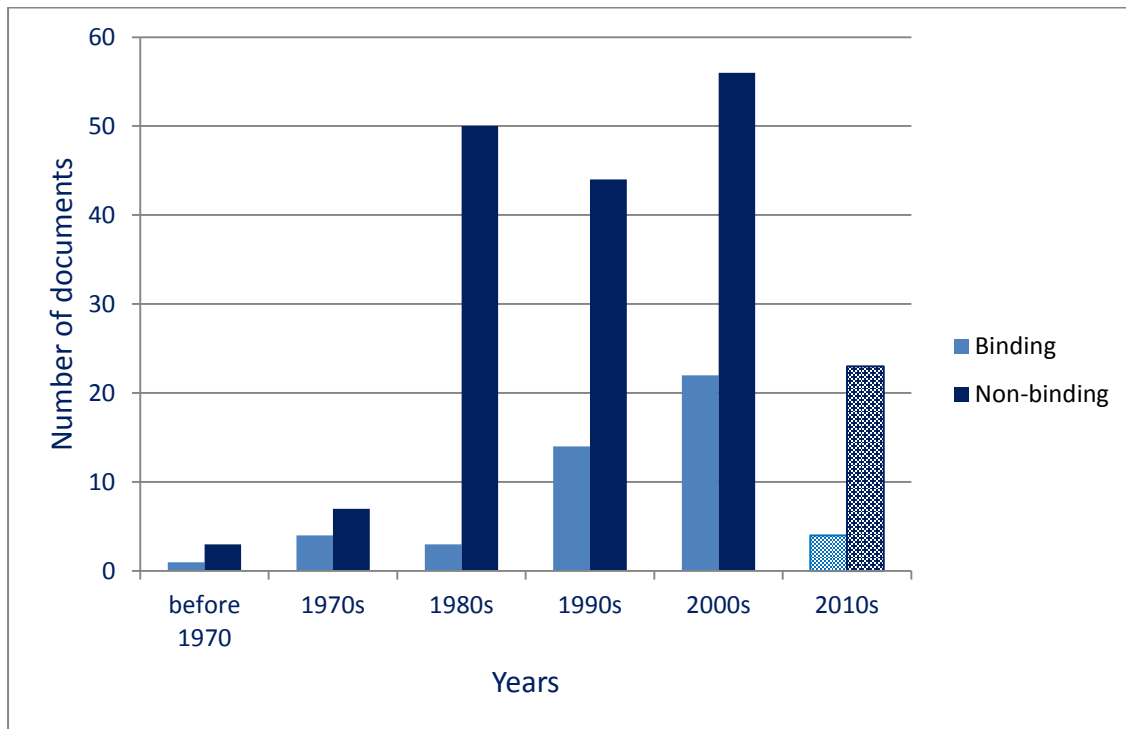
¹ The selection was based on information retrieved from Pre-Lex. We chose to take the last available document, because if accepted this is the most relevant document for the member states (e.g. if it is a binding policy) and/or it reflects the aims of the European Union (e.g. if it is a non-binding measure).

4.2. Development of binding and non-binding documents

Some researchers maintain that the expansion of the policy agenda of the European Union towards market-adjacent or non-market areas has not been accompanied by a gain in legislative power of the European Union in these areas (Hantrais 2007; Scharpf 2002). The expansion together with new modes of government has rather led to a decrease of legally binding acts relative to legally non-binding acts. The development of binding and non-binding initiatives in fertility relevant family-policy areas supports as well as challenges these assumptions. Not surprisingly, due to the limited legislative authority of the European Union in the area of fertility-/family-related issues, non-legally binding initiatives outnumber the legally-binding acts (Figure 1). However, if we compare the sum of acts by decade, we do not find a significantly different development between binding and non-binding acts. Both have increased from decade to decade. Until the end of the 2000s, the share of legally binding documents has not decreased but increased relative to legally non-binding documents.² The onset of the increase in the number of non-binding documents started earlier (1980s) than the onset of the increase in the number of binding documents (1990s). This implies that the heightened attention which the European Union has come to pay to fertility- and family related issues were first mostly non-binding in form and then followed by binding acts.

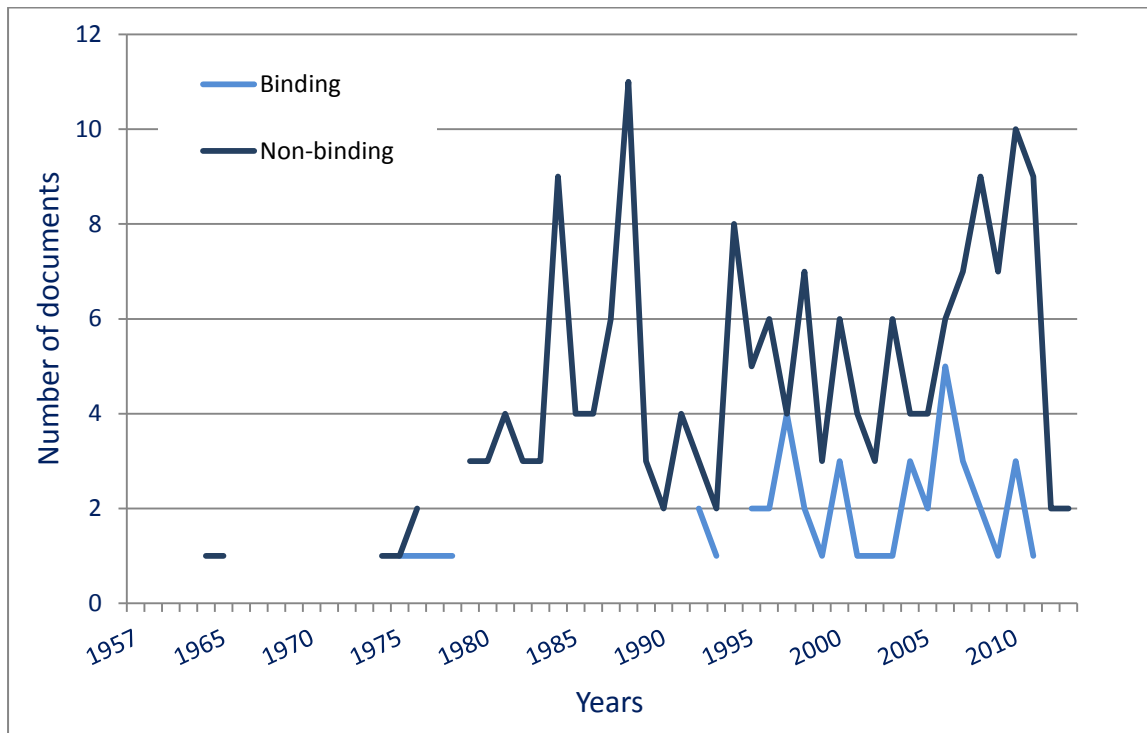
² Since the 2010s are not over, the numbers cannot be compared to those of the previous decades. We therefore use a different pattern in the figure to represent the activities of the last years in the figure

Figure 1: Development of legally binding and legally non-binding fertility-relevant family policy initiatives (by decade)



An overview over the EU-activities by year provides a more nuanced picture (Figure 2). As regards non-binding documents we find more continuous activities over time. Since the early 1970s the European Union published non-binding documents related to our issues almost every year. The intensity increased substantially in the early 1990s, and then again during the period 2007 to 2012. The latter was the period when the Demographic Expert Group instituted by the European Union was in office (2007-2012). Compared to non-binding documents, legally binding acts are more scattered over the individual years. The higher number of legally binding acts in the 1990s is due to the heightened activities of the European Union in social policy matters (e.g. maternity leave; parental leave) during this time (Falkner, Treib and Hartlapp 2005; Hantrais 2007). Since 2000 we also observe a more continuous legislative activity pattern than prior to 2000. However, the yearly activity levels have not increased linearly. We rather find that the activities fluctuate by year, with heightened activities in particular years or periods, and fewer activities in other years. Despite the latter, the general increase both in binding and non-binding acts may indicate that fertility relevant family policy issues have become more firmly established within the agenda and the policy realm of the European Union.

Figure 2: Development of legally binding and legally non-binding fertility relevant family-policy initiatives (by year)



4.3. Content frame of fertility related family policies initiatives of the EU

Legally binding acts (regulations, directives, decisions) have to be implemented or transposed into national laws (see, e.g., Falkner, Treib and Hartlapp 2005 on the implementation of the parental-leave directive and other family- and fertility related directives into national member states' laws). They therefore have a greater immediate impact on national legislation than non-binding acts. The social impact of an initiative, that is, the impact on childbearing behaviour, does not necessarily depend on whether it has a binding or non-binding form. For, in some cases, the transposition of a binding legislation into national legislation may require only very minor adjustments of the national law (Falkner, Treib and Hartlapp 2005), so that one may expect no measurable impact on the behaviour of families (Neyer and Andersson 2008). Political scientists maintain that apart from the legal strength of an act, its outcome and its effect may depend on its framing, that is, which social issues it addresses and which aims it is to achieve (on framing and its impact, see: Goffman 1974). This also applies to fertility related policies. For example, fertility-relevant family policies proposed with a perspective on gender equality may turn out quite differently than fertility-relevant family policies proposed with a perspective on employment or with a perspective on tackling

demographic change. Many of the European Union initiatives, in particular non-binding acts, propose a frame for the content of policies or an aim rather than a concrete measure. For example, the document may state that member states "... should take steps to facilitate the reconciliation of work and family", leaving it to the member state what kind of measure it introduces to achieve this aim. Many EU documents also suggest a variety of policies aiming at the same goal, such as reduce working time, expand child care, raise employment participation, combat poverty, etc. Broad frames or multiple policy suggestions make it difficult to extract the main focus of a document. To assess the core content we decided to classify all initiatives by their key frame or topic rather than by the proposed measures. Our key frames or topics turned out to be more detailed than the areas in which the European Union has the legal authority to legislate. The latter areas were too few and too broad to reflect changes in framing and policy content over time. We identified the following key frames which applied to the collected documents: Working time and reconciliation of work and family life; maternal health and maternity leave; childcare and care for children; family protection and family well-being (e.g., poverty); gender equality; demographic change and population issues; reproductive rights and reproductive technology; framework policies (treaties, institution of an action programme, platform, roadmap, expert group, etc.). The results of this classification provide some insight into the development of the policy frames and policy contents and of their changes over time. Four aspects are particularly striking:

First, specific topics cumulate at specific times or time periods. For example, maternal health/maternity appeared frequently in the early 1990s, when the pregnant worker's directive (Directive 92/85/EEC). Working time and/or reconciliation of work and private life occurred from the 1990s onwards, but comparatively rarely before. This reflects the social policy activities in the early 1990s (see Falkner, Treib and Hartlapp 2005) as well as the shift in the European Union's gender-equality policies from promoting equality at work to promoting reconciliation of work and family (Jacquot, Ledoux and Palier 2010). The cumulation of specific policy issues at specific times, such as demographic change in the early 1990s or in the 2000s, also seems to coincide with the external events (in our case, the Kairo population conference) or with prevailing attitudes towards social issues among European member states and European citizens (see also, Hageman, Hobolt and Wratil 2016).

Second, gender equality is a dominant frame in fertility relevant policy issues. Gender equality does not only appear most consistently throughout our observational period; on average, the usage of gender equality as key frame has also increased over time. This may be attributed to the fact that first, as early as the founding Treaty (Treaty of Rome 1957, art. 119)

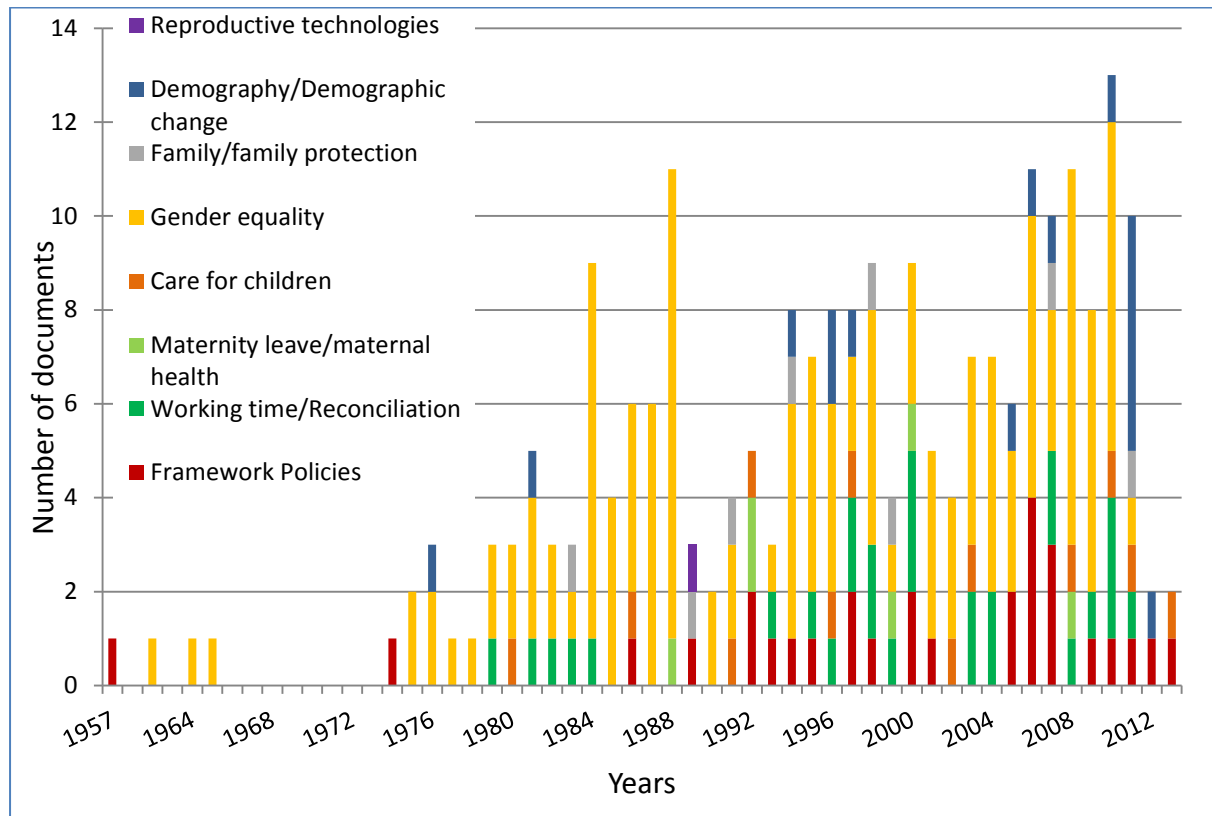
quality between women and men (then only regarding pay) was acknowledged as a policy aim of the European community. This early incorporation of gender equality may have facilitated subsequent policy suggestions to promote gender equality (Pierson 2000). Secondly, gender equality has become a widely accepted norm across Europe, so that gender equality may form a common denominator for European Union fertility relevant family-policy initiatives.

Third, compared to gender equality, employment-related key frames appeared relatively late on the fertility relevant family-policy agenda, despite the fact that the European Union has the authority to legislate in employment matters. The activity pattern regarding working time, the reconciliation of work and family life, and partly also maternity protection and parental leave, corresponds to the enhancing attention that the European Union has paid to fertility and family matters in order to facilitate women's labour force participation.

Fourth, as in other policy areas, framework policies (roadmaps, action programmes, etc.) have also become a means to promote broader fertility relevant family policies since the 1990s and the establishment of the open method of coordination as a governance tool.

Fifth, although demographic changes such as the decline of fertility rates, the increase in non-marital births, in parental separation/divorce and in single parenthood, have fundamentally altered family forms since the late 1960s, demographic change and demographic issues have not been consistent issues in fertility relevant family-related policy initiatives of the European Union. Demography as key frame occurred mainly in the early 1990s and in the 2000s in the context of low fertility and population ageing.

Figure 3: Key frames and topics of fertility relevant family-policy initiatives of the European Union



5. Summary

In this paper we presented an overview over the development of fertility relevant policies at the European Union level. The overview makes use of the database of European Union Family Policies with a focus on fertility related issues. To our knowledge it is the first overview based on a systematic collection and quantitative description of EU documents related to this topic. We distinguished between binding and non-binding acts and classified their policy content according to their main topics or frames. Our results indicate that the European Union addressed the fertility relevant family-policy issues we analysed far longer than commonly assumed. The EU activities in this policy area have increased over time, especially since the 1990s. Non-binding acts clearly outnumber binding acts, but both show a similar pattern of increase. In sum, we may conclude that the heightened EU activities of the 2000s triggered by the growing attention to low fertility in Europe did not mark the emergence of an entirely new field of policy activities in the EU. The policies suggested to combat low fertility in the 2000s had been on the European Union agenda before. The

analysis of the framing and key topics of policies over time, however, suggests a more comprehensive approach of the European Union to fertility relevant family policy issues. Whether this indicates that fertility relevant family policy issues will continue to be addressed at the European Union level remains to be an open question for further research in the future.

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Appendix: Data collection strategy

To document the development of fertility related family-policy initiatives at the EU level, we collected data on policy initiatives at the intersection of gender, employment, and family life. These dimensions are considered as relevant for childbearing and fertility development in Europe and they also cover essential dimensions of family-related societal development at large.

We proceeded in two stages: In the first stage, we decided to focus on three policy areas, namely childcare, reconciliation between private life and working life, and gender equality. To get an overview over EU-policies, we consulted the website “Summaries of EU legislation” (http://europa.eu/legislation_summaries/index_en.htm). It offers up-to-date summaries of EU activities and legislation in force in the form of standardized and easy-to-read factsheets. Only legal decisions of temporary interest, such as decisions on grants, are not covered. This database covers now 36 thematic areas³ that correspond to the topics of the European Union (for further information, see the webpage: http://europa.eu/pol/index_en.htm). We focused on the thematic area “Employment and social affairs”, since this area is most closely related to our topic. We collected all the policy documents and their related acts that fell into the policy areas previously selected. We additionally checked the webpage of the European Commission’s Directorate General (DG) for Employment, Social Affairs & Inclusion (<http://ec.europa.eu/social/home.jsp>), in particular the page “Policies and Activities”. We gathered the policy documents mentioned in this page that belonged to one of our selected policy areas and that were not yet recorded in our database.

These three strategies were supplemented by a three-fold analytical work: 1) we checked whether our collection missed any policy document relevant to our selected policy areas that was mentioned in existing literature on European social policy; 2) we searched Pre-lex⁴, the database which contained the documents relevant for the policy development, for documents not yet included in our database and 3) we went through each found policy document, and we recorded and gathered all the acts mentioned in their texts either as related acts or as acts that had become obsolete due to the passing of them. Furthermore, we applied two main selection criteria: a) we only included policy documents adopted by one of the main EU institutions - i.e. the European Commission, European Parliament, European Council,

³ When we did our initial work, there were only 32 thematic areas.

⁴ Pre-lex still existed as a separate database when we started our work. It has since been incorporated into the database Eur-Lex.

Committee of the Regions and Economic and Social Committee -; b) we restricted the collection to those acts that were fertility- and family- relevant and that treated the respective policy area in a broad sense. For example, in the area “gender equality”, we left aside those policies that deal with women in decision-making processes, women in armed conflicts, and women in science. As to the time coverage of the database, we decided to consider all the policies adopted since the creation of the European Communities in 1957.

In order to retrieve the official text of collected policy documents, we looked at the database “EUR-Lex” (<http://eur-lex.europa.eu/en/index.htm>). This database offers access to EU law. Its principal source is the Official Journal (OJ). The original documents are catalogued by unique identifiers called CELEX numbers and thus easy to retrieve. However, this database does not include all EU policy documents passed since 1957. Some documents not published in the OJ and some EU historical documents are not catalogued. To retrieve the official text of these documents, we used the Archive of European Integration maintained by the University of Pittsburgh (<http://aei.pitt.edu/>). This archive collects key historical European Union documents which are not readily available in electronic format in the EU databases. Most documents are preparatory acts, i.e., of the following types: COM documents; SEC documents; annual or general reports; Green and White Papers and supplements; committee reports. Whenever the document we were looking for was not available in this database either, we contacted the Archives and Documentation Centre (CARDOC) of the European Parliament. This centre sent us electronic versions (in pdf format) of official texts of EU policy documents. Finally, for documents released by the Council of the EU, we also made use of its Public Register (<http://www.consilium.europa.eu/documents/access-to-council-documents-public-register?lang=en>), which offers full access to official policy texts.