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GENDER UPDATE

Albion lost, paradise regained? Gender+ equality policies in the European Union 27

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Key message

- Brexit will not enable the EU to make progress again in gender+ equality policies.

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Will Brexit, at least, have the collateral benefit of enabling the European Union (EU) 27 to make progress again in tackling gendered inequalities? Some people might believe that once British opposition to ‘more Europe’ is silenced, the surreptitious dismantling of gender+ equality policies might be reversed: paradise regained. Are such expectations justified? Forecasting the post-Brexit future is, of course, not easy. Looking back sheds light on the UK and its role in EU gender-equality policymaking, thus allowing us to weigh up the impact of its departure.

Perhaps it comes as a surprise that, after joining in 1973, the UK initially supported European equal rights legislation. Campaigns by the British women’s movement, civil rights movement and trade unions had resulted in a relatively progressive Equal Pay Act 1968 and Sex Discrimination Act 1974. The UK therefore applauded similar rules at the European level and even strengthened the proposals on the table by introducing the concept of indirect discrimination in the 1976 Equal Treatment Directive and by proposing to make the establishment of national equal opportunities commissions mandatory. However, shortly after, British resistance to gender-equality legislation became manifest and developed into a permanent feature. In addition, during the Thatcher Era from 1979 to 1990, the UK became a staunch promoter of deregulation and privatisation, which perfectly matched the completion of the European internal market but undermined gender equality policies. British negotiators consistently opposed each proposal for the regulation of parental leave, part-time work, social security or self-employment. However, the UK was never the only obstructionist as Denmark, Greece, the Netherlands and Germany usually joined in blocking progress. Eventually, treaty changes, the abolition of unanimity for gender+ equality decision-making, the accession of the pioneers of Sweden and Finland, and a strengthened European Parliament (EP) helped the EU to sideline proponents of

deregulation. Obviously, it would have required upsetting the market-making logic to tackle inequalities in a structural way. Yet, at the least, the EU obliged old and new member states to adhere to far-reaching commitments, including non-discrimination against lesbians, gays, bisexual and transgender people and reversing the burden of proof in sex discrimination cases.

Since the financial crisis erupted in 2008, legislative proposals have remained blocked in the European Council. Increased social inequalities have only been addressed by non-binding recommendations and ad hoc incentives. In the past, crises often presented a window of opportunity for strengthening the so-called social dimension of the internal market in order to regain the support of European citizens. However, citizens' concerns have changed. Traditional protests from employers and governments against 'social Europe' based on costs (part-timers or parents will become too expensive) and ideology (the market will arrange it) have been overruled by anti-gender mobilisation. Right-wing populists, nationalists and Christian conservatives have coalesced under an anti-gender banner. They accuse the EU of reshaping society by promoting sexual and reproductive rights and protecting 'the Other': lesbian, gay, bisexual and trans (LGBT) people, minority ethnic groups, Muslims, and immigrants.

The political arena has changed. Brexit raises the question as to which anti-gender or pro-feminist actors will disappear from the arena. Looking at the different EU institutions, the picture is not so rosy. In the past, the European Commission played a prominent role in putting and keeping gender+ equality on the agenda. British Commissioners Roy Jenkins (President of the Commission in the 1970s) and Ivor Richard (Social Affairs in the 1980s) were strong supporters of this mission. To the dismay of 10 Downing Street, British EU officials have been more loyal to 'Brussels' than to 'London'. Hence, Brexit may slightly weaken the Commission. More debilitating, however, is the attitude of the European Council, where the advent of anti-immigrant, Christian-conservative and authoritarian governments has created a powerful anti-EU and anti-gender alliance. This has curtailed the Commission's margin of manoeuvre in agenda setting.

In the European Parliament (EP), usually a feminist ally, the British departure will leave two groups substantially weaker off. The European Conservatives and Reformists will lose 19 of 74 members, leaving the Polish Law and Justice (PiS) as largest party, and the European Freedom and Direct Democracy group will see 17 of 45 members decamp (mainly UKIP). Although this clearly muffles the anti-gender voice, the upcoming elections in May 2019 are way more decisive: how many seats will radical right-wing parties win? Will they be able to act in unison and replace the social democrats as the necessary 'coalition partner' for the centre-right Christian democrats?

In the Council of Ministers, without the UK, opposition to gender-equality policies will be weakened but not silenced. As in the 1980s, the UK is always among delegations preferring national or flexible solutions, but it is never alone. The 2008 draft directive on maternity leave was blocked in the Council by 11 delegations (and axed in 2015). Also on hold for some time have been draft directives on equal treatment outside the labour market irrespective of age, disability, sexual orientation or religious belief, and on gender balance on boards. Interestingly, Council voting patterns on adopted proposals mostly show almost unanimity. Sometimes, the UK or another member state (the Czech Republic or Denmark) will vote against the proposal without being able to block adoption, but clearly to boost their reputation

at home. Obviously, real negotiations have happened before the vote, watering down the contents of a proposal. Therefore, the dynamics in the Council will show no drastic change unless domestic political changes bring different majorities to the table.

Finally, feminist actors will probably not regret the departure of Nigel Farage and some other British politicians. However, gender+ equality in the EU has also developed thanks to strategic litigation at the European Court of Justice (ECJ). In particular, British activists, legal experts and judges have been very active in bringing cases to the ECJ. They have successfully improved pension rights for women and social security rights for married women, and strengthened the rights of transgender, lesbian and gay people. For their relentless efforts to bring court cases, British legal activists and experts will be dearly missed. On that account, unfortunately, the departure of Albion will not strengthen the hand of all those who favour a more just, egalitarian, rainbow-coloured, inclusive EU.