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SNAIL OR SNAKE?
SHIFTS IN THE DOMAIN OF EU GENDER EQUALITY POLICIES

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Abstract

*Gender equality constitutes an EU ‘success story’. European directives changed national legislation and put new issues on the national agenda (indirect discrimination, sexual harassment). Gender equality seems a robust part of the *acquis*, as Estonia discovered recently. However, in a changing Union, how will equality policies fare: slow like a snail or smooth like a snake? After ‘Maastricht’, new procedures were introduced for equality issues. They seemingly shifted the action in this domain from state actors to transnational non-state actors and European Parliament, and from coercive to consensus-oriented instruments. I investigate these shifts, and I assess the implications: may we expect further advances, or will the *status quo* prevail? I argue that the shift involving the social partners and the shift to less coercive instruments favour the snail, whereas the shift involving the European Parliament and removing the unanimity rule favours the snake. The overall performance in the domain of gender equality, however, is expected to be slowed down by the accession of the CEEC.*

Introduction¹

Gender equality in the labour market constitutes an EU ‘success story’ when compared to other aspects of European social policy. Whereas social policy and social security remain predominantly the domain of national legislators, in the field of gender, European directives gave women rights they did not have under national law and introduced new issues on the agenda (indirect discrimination, sexual harassment). However, in a changing Union, how do equality policies fare: slow like a snail or smooth like a snake?

The question what constitutes an ‘advance’ in the field of EU gender equality policies, is defined here as the approval of legal instruments for which two criteria obtain. First, the instruments have the aim to further equal rights, equal treatment, and equal opportunities for women and men and to fight discrimination, and they define standards and open up possibilities for women (and men) to denounce discrimination and to claim equal treatment before the court. Of course, the focus on equality excludes the wider domain of issues of special concern to women, like for instance trafficking and prostitution. In these fields, policies do not create equal rights and opportunities but aim to improve the protection of women and to defend their interest (though opinions diverge on the best way to do so, contrasting for instance the Swedish prohibition of prostitution and the Dutch legalization of prostitution). It is not argued that legal advance always means *de facto* progress for the women concerned. For instance, equal treatment in the field of labour conditions implies the abolition of protective measures

¹ I thank Mieke Verloo for helpful comments and suggestions on a previous version of the paper.

for women, including the prohibition of night work in industry. The ‘right’ of women to work at night will not be perceived as ‘progress’ by the women workers affected. However, such considerations fall outside the scope of this paper. Second, these instruments contain supranational standards or prescribe measures that are superior to the existing standards in the majority of the member states – as opposed to lowest-common denominator standards, that reflect the outcome that the most reluctant partner is ready to accept (Haas 1964:111).

In an international organization like the EU, states are expected to be reluctant to accept costly policies,² because internally, implementation of a costly supranational policy would raise protests by disadvantaged groups and weaken the electoral support for the government. Moreover, externally it would weaken the relative power position of the state. A state will be in favour of a supranational policy proposal if at the national level the perceived benefits are higher than the perceived costs. However, sometimes a state is forced to adopt a costly policy, when it fails to construct a blocking minority or, under unanimity rule, when its relative power position is too weak to enable it to cast a veto (Van der Vleuten 2001). A preliminary condition for costly policies to be approved is that a strong, far-reaching proposal is on the agenda.

Before ‘Maastricht’, decisions concerning gender equality policies were taken according to the consultation procedure, where the Commission formulates a proposal, the Parliament gives an opinion, and the Council decides by unanimity. The probability that advances in equality policies were achieved increased when 1) the European Commission was in the position to put a strong proposal on the agenda; and 2) member states were ‘sandwiched’ by simultaneous pressure at the supranational and the subnational level (Van der Vleuten 2001). More specifically, the Commission strongly influenced the agenda when three conditions were fulfilled. First, the status quo was unattractive to the member states so *any* decision would be better than no decision, and second, the Commission formulated an ‘innovative proposal’, using expert knowledge, and third, the Commission received the support of the state holding the presidency or a forerunner state. Until 1992, five directives were approved concerning equal pay, equal treatment concerning access to the labour market and labour conditions, equal treatment

² A policy is costly when the expected political, economic, and ideological costs are higher than the initial preference of the state, or when implementation turns out to be more costly than expected. We distinguish political costs and benefits (the amount of social pressure in favour or against the proposal), economic costs and benefits, and ideological costs and benefits (the extent to which a proposal fits the ideological programme of the government and the existing policy paradigm) (Van der Vleuten 2001).

in social security, and equal treatment for self-employed women (see Appendix). They were 'costly' as they introduced higher standards than the existing national ones.

'Maastricht' marks a turning point, as the Treaty introduced new procedures and practices. First, new actors appeared on the supranational scene. Representatives of management and labour at EU level were entitled to conclude agreements that the Council was supposed to implement by a decision, to be approved by a qualified majority or by unanimity, depending on the subject matter. Second, the policymaking procedures in the field of gender equality were changed. Proposals based on Article 137 EC Treaty (improvement of the working environment, working conditions, equality between women and men with regard to labour market conditions and treatment at work) and Article 141 EC Treaty (equal pay and equal treatment) now came under the co-decision procedure. As the name indicates, the European Parliament and the Council decide on equal terms. A proposal has to be approved by a qualified majority in the Council and an absolute majority of the European Parliament. Third, the Commission introduced a new strategy and new tools: mainstreaming, gender impact assessment and benchmarking (Community Framework Strategy on Gender Equality 2001-2005). These instruments have a less coercive character than legal instruments and raise the question, whether they enable advances to be made in the field or whether they favour the status quo.

The central question of this paper is, whether these shifts facilitate or hamper the advance of equality policies. This question becomes even more relevant in the light of the enlargement of the EU as of May 2004. In order to answer the question, I will assess the consequences of each shift for the conditions explaining progress 'before Maastricht'.

Shift 1: New players – labour and management

The new procedure that in Maastricht was included in the Social Agreement gave management and labour a role in supranational rulemaking. Those in favour of social legislation hoped that the procedure would allow overruling the British veto in the Council, as they assumed that the Council would not dare to vote down an agreement reached between European trade unions and employers. Those opposed to social legislation were of the opinion that the procedure would not result in bold decision-making as trade unions and employers would never be able to reach agreement on any far-reaching matter. In the field of gender equality, the social partners have reached two

agreements that subsequently were approved by the Council: the agreement on parental leave, implemented by Directive 96/34/EC, and the agreement on part-time work, implemented by Directive 97/81/EC. Do these directives represent 'lowest-common denominator' outcomes, laying down standards at a level already realized in (almost) all member states? Alternatively, do they contain provisions that require member states to introduce new and costly measures?

A comparison of the agreement on parental leave with the national standards in the member states shows that the directive reflects the lowest common denominator. In 1998, the European Foundation for the Improvement of Living and Working Conditions made an assessment and concluded that 'For the majority of countries, the Directive is unlikely to entail major changes to existing parental leave arrangements' (EIRonline 1998:10). Most countries already provided leave according to norms that were superior to the EC standard. The minimum amount of time for leave (3 months) represents the lowest amount granted in any of the member states which already had a statutory right for parental leave, i.e. in Greece. The potential for the transformation of gender relations, pushing men to take up an equal share of family responsibilities, has not been realized. First, the directive does not clearly state that the individual right to leave is not transferable to the female partner, and second, there is no compulsory provision for a minimum allowance or pay. The lowest common denominator-character is confirmed by the fact that the Commission started only two infringement procedures. They concerned minor shortcomings like the exclusion of maritime workers in Greece, and the lack of a statutory provision in Denmark to implement the *force majeure* clause for leave for urgent family reasons (Commission 2003).

Only Ireland, Luxembourg, and the UK had to introduce new and expensive provisions, as they provided no statutory right to parental leave. Ireland and Luxembourg could not veto the Directive, as they have only five votes of the 16 votes required for a blocking minority under the 11-state Social Agreement procedure. They introduced the required legislation in 1998 and 1999. Subsequently, the Commission's infringement procedures even pushed these two countries to improve the new legislation (Commission 2003). The UK had vetoed the parental leave directive several times between 1983 and 1986 (Van der Vleuten 2001, 247-8). In 'Maastricht', it had refrained from blocking all progress in the social policy domain and had preferred to take an opt-out. Therefore, the UK could not veto the directive anymore, and the directive did not

cover the UK. In 1997, the Labour government ended the UK's opt-out from the Social Agreement. It adopted the Employment Relations Act implementing the Parental Leave Directive in 1999. As the British provisions excluded parents of children born before 1999, the Trade Union Congress started a case before the British High Court, which referred the case to the European Court of Justice. The Commission put simultaneous pressure on the government with a reasoned opinion (first stage of an infringement procedure) concerning the scope of the British act. The government, sandwiched, did not await Court rulings and removed the 1999 cut-off date with the Maternity and Parental Leave (Amendment) Regulation in 2001 (Sift 2003).

The interests and the stakes of the actors involved explain the modest outcome. The initiative to put parental leave on the agenda of the social partners was not only motivated by concern about the rights of working parents. Pressure to deal with this issue in a social dialogue came from the European Council, the Commission, and the social partners themselves, for different reasons. The European Council was worried about the credibility of its efforts in the field of employment and labour market policies at a time of political and economic upheaval in the preparation for Economic and Monetary Union. Therefore, it repeatedly insisted that full use be made of the Social Agreement procedure (European Council, 1993 and 1994). The Commission seized the opportunity to achieve progress with parental leave, at last. The first Commission proposal on parental leave and leave for family reasons dated from 1983 (COM(1983)686). British resistance had blocked adoption. In 1993, the Belgian Council Presidency put it back on the agenda. The delegations discussed the Belgian compromise proposal several times, but they did not reach agreement. They discussed the draft once more in September 1994, under the German Council Presidency. As the UK "stressed its opposition in principle to the proposal and the fact that this would not change in future" (EIRR 1994, 249:2), the Commission decided that it would reintroduce the proposal under the 11-state Social Agreement procedure. The Commission started consultations of the social partners in February 1995 in order to sound their readiness for involvement in this area. The social partners were keen on reaching a Community-level agreement, as "this would prove the social partners' ability to be key players in the process of European integration" (EIRR 1995, 261:3). Moreover, the first attempt to reach such an agreement – in 1994, on European Works Councils – had failed. The incorporation of the Social Agreement in the Treaty was on the agenda of the then forthcoming intergovernmental conference. As long as the 'social

dialogue' had not produced any tangible results, the social partners risked seeing the procedure redrafted and their 'coregulatory power' reduced (Falkner 1998:115). The social partners considered the issue of parental leave as a relatively easy subject, as no crucial interest was at stake. Therefore it seemed "a suitable 'guinea pig' for Euro-level collective negotiations" (Falkner 1998:114). The employers preferred to participate in the negotiations rather than leaving the matter to legislation – as the Commission would legislate if the social partners did not come to an agreement. Thus, not the concern to improve the possibilities for women and men to share family responsibilities was central to the negotiations but the prestige of the European Council, the Commission, and the social partners.

On 14 December 1995, management and labour signed a framework agreement on parental leave. It left contentious issues such as pay, the extension of rights enjoyed at work to the period in which the leave is taken, and the right to social security benefits during leave, to be decided at national level. Reframing the issue in terms of increased flexibility in the labour market instead of equal treatment of women and men facilitated approval of the agreement (Stratigaki 2000:43). "The draft agreement arguably seems to be rather more significant for the fact that it has been concluded, than for its content" (EIRR 1995, 263:3). In March 1996, the Council reached a political consensus and in June 1996 it adopted formally the directive that implemented the framework agreement.

Part-time work was the second issue in the field of gender equality where the social partners negotiated an agreement. Draft directives on 'atypical work' awaited approval by the Council since 1981. They were 'put on ice' in 1985, as the United Kingdom, supported by Greece and Denmark, blocked all supranational instruments concerning working time (Van der Vleuten 2001). In 1991, the Commission came up with new proposals. Interestingly, she had changed her mind and strategically reframed the issue. In the 1980s, she considered work without a standard full-time contract as undesirable. She aimed at restricting such work as much as possible. Part-time workers had to be granted proportional claims on remuneration, holiday, redundancy, and retirement payments. In 1991, she came up with draft directives based on the idea that atypical work linked up with the need for flexibility and cost reduction of employers and with the need of workers to reconcile work and family. As was the case with parental leave, both the Belgian and the German Presidency made efforts in 1993-1994 to get a watered down draft on 'part-time and fixed-term contracts' approved. Their hopes were

annihilated when the British Employment Secretary Michael Portillo cast an outright veto (Falkner 1998:131-2). The Commission reframed the issue once more. She replaced the notion of 'atypical' work with 'flexible' work, and she argued now that the promotion of flexible forms of work was necessary to create jobs. Administrative and fiscal barriers to atypical work had to be lifted. In September 1995, the Commission reintroduced the draft directive under the 'social dialogue' procedure, encouraged by the concerns of the European Council to enhance new forms of work to combat unemployment. After tough negotiations, on June 6, 1997, the European organizations of management and labour signed the framework agreement on part-time work, and in December 1997, the Council adopted the decision to implement the agreement (Directive 97/81/EC).

Although the directive aims at the elimination of discrimination against part-time workers, which is of great interest to women, the directive fell short of expectations as the frame of 'job creation' dominated the 'non-discrimination'-frame. In certain respects, it even was a step back from the level of protection reached in the equal treatment directive (1976) and ECJ case law on part-time work. Notably, the exclusion of social security matters from the agreement constitutes regression rather than an improvement (Bergamaschi 2000:170-1). Moreover, precisely different social security rules between part-timers and full-timers, and between part-timers in different member states constitute the major source of discrimination (Falkner 1998:139). The social partners rejected obligatory pro-rata treatment of part-time work as proposed by the Commission (Ostner 2000:35). The directive does not cover fixed-term and temporary work, restraining the scope of the Commission proposal (see Falkner 1998:141 for a comparison of the Commission's 1990 proposals and the outcome of the social dialogue). In fact, the directive reflects the lowest common denominator. The vagueness of the standards of the directive leaves much flexibility for implementation at the national level. The directive does not force member states to introduce higher standards in national legislation and practices.

As these two directives have been adopted after a blockade of some 15 years in the Council of Ministers, at first glance Ostner seems to be right when she argues, that "the supranationalist consensus has obviously contributed to the passage of significant women friendly legislation" (Ostner 2000:37). However, the shift from blockade to passage in the Council was enabled by lifting the unanimity requirement, and not by the consensus of the social partners. When we look at the content of the directives, the shift

from bargaining between Commission, European Parliament, and Council of Ministers to bargaining between the social partners does not seem to improve prospects of strong gender equality policies. Theoretically, the procedure could very well ‘favour the snake’, as the social partners are in an institutionally strong position to put pressure on member state governments ‘from below’. Pressure at the subnational level would raise the political benefits of new gender equality instruments. The member states could be ‘sandwiched’ by double pressure from trade unions and employers at the national and at the supranational level. However, there has been no such double pressure by the social partners in favour of gender equality. Trade union involvement does not lead to high standards on gender issues, for several reasons. First, the under-representation of women in trade union decision-making bodies is reflected in a male-oriented bargaining agenda.³ In general, gender equality has no priority. Second, trade unions are opposed to the development of gender equality legislation, as they are afraid of losing autonomy and bargaining power. Bergamaschi even argues that the stereotypical model of collective bargaining seems to be “one of the greatest barriers to the full recognition of the principles of equal treatment and equal opportunity” (Bergamaschi 2000:172). On the other side of the table, employers prefer voluntary agreements to legislation. Thus, efforts to legislate in this field entail more political costs than benefits as far as both sides of industry are concerned.

Like in the ‘normal’ procedure for the elaboration of European legal instruments, the Commission sets the agenda. However, it does not have the same advantage as in the ‘normal’ procedure where the Council can deviate from the Commission proposal only by unanimity. In the ‘social partners procedure’, the bargaining is done in “secret discussions” (Stratigaki 2000:42) between the major European organizations representing labour and management. The European Parliament, where the Women’s Committee has consistently worked for progress in the field of gender equality, “is merely an onlooker” (Glase, 1996), as it cannot influence the content of the agreement. In its report, the European Parliament aptly criticized the crucial gaps in the agreement – but its influence is zero, comparable to its lack of influence in the ‘old’ consultation procedure, which dominated European policymaking before the Single European Act (1986). The shift therefore does not contribute positively to advance the field of equality

³ Women make up half of the population, 40% of the trade union membership, 5-20% of the delegations of the social partners, and their number decreases dramatically towards the top levels (Ghilardotti 1996).

policies, as actors that have little interest in strong gender equality provisions have taken the place of actors that promote strong gender equality provisions.

Shift 2: New procedures - codecision and QMV

The social partners preferred not to negotiate on sexual harassment (refusal by the employers, Gregory 2000:188) or the reversal of the burden of proof in sex discrimination cases (Ostner 2000). They declared, “The issue (the reversal of the burden of proof, AvdV) was not the domain of agreements involving them” (*The Magazine* 1997:15). The Commission decided to propose binding legislation under the codecision procedure introduced by the Treaty of Maastricht. As opposed to the ‘social partners’-procedure, the codecision procedure offers the European Parliament the opportunity to get involved with the content of gender equality proposals to an unprecedented extent. Under the codecision rule, the European Parliament has the power to prevent legislation that it does not approve of from being passed. This blocking power is expected to throw its shadow on the bargaining process and is useful in cases where the Council is keen to legislate. It is less useful, however, in cases where the European Parliament is keen to legislate and the Council is unwilling to do so. Here, the ‘pre-Maastricht conditions’ might explain Council approval: when the status quo is unattractive, when the Commission has come up with an innovative proposal, and when the state holding the Presidency or a forerunner state actively support the Parliament’s position.

As the European Parliament has a reputation of being active in the field of gender equality, increased involvement of the EP with the decision-making process is expected to strengthen the position of the Commission vis-à-vis the Council and to increase the prospects of progress. Moreover, not unanimity but qualified majority is the voting rule. Therefore, a country willing to block new legislation has to build a coalition strong enough to constitute a blocking minority in the Council.

The directive on the reversal of the burden of proof (97/80/EC) and the directive amending the famous 1976 equal treatment directive (2002/73/EC) have both been approved by qualified majority, the burden of proof directive under the cooperation procedure, and the equal treatment directive under the codecision procedure. The removal of the veto and the increased role of the European Parliament are expected to increase the chances for costly new policies.

In the case of equal treatment, this indeed seems to be the case. The motivation to modify the 1976 Equal Treatment Directive (76/207) was the *Kalanke* ruling by the European Court in October 1995 (C-450/93). The ruling qualified positive action measures as incompatible with the Equal Treatment Directive, whereas this conflicted with the intentions of those who had drafted the directive in the 1970s. In 1996, the Commission proposed a modification of Article 2 of the Directive (COM(96)93) in order to clarify the concepts of discrimination and positive action. The proposal, though modest, encountered resistance in the Council, where unanimity was required. It was shelved. After the Treaty of Amsterdam came into force (1999), the Commission reframed the proposal for a revision of the equal treatment directive as based on the extended Article 141⁴ (COM(2000)334). In this way, the codecision procedure applied and only a qualified majority was required. The European Parliament seized the occasion to pronounce itself on the issue. It organized expert meetings and a hearing in November 2000, and came up in May 2001 with a series of amendments. Basically, the EP disagreed with the Commission that only a limited revision was needed, codifying the existing case law of the European Court (Sjerps 2000). The EP Committee on Women's Rights and Equal Opportunities wanted to rethink the directive fundamentally.

It has succeeded in two readings and a conciliation procedure to introduce a number of amendments to the Commission proposal that have considerably increased the costs of the directive for the member states, as it now requires more extensive legislative changes in more member states. The directive now contains a clear definition of different types of discrimination, including for the first time an explicit recognition of harassment (based on somebody's sex) and sexual harassment as discrimination (Gregory 2000). It has strengthened the protection of women in case of pregnancy and maternity, it provides for sanctions, it has introduced the obligation for member states to create specific bodies to ensure compliance with equality legislation, and member states have to issue follow-up reports every two years (where the Council preferred every five years and the Commission proposed three years). The involvement of the European Parliament lifted the directive to a level above the lowest common denominator. The Commission supported most of the amendments made, as she acknowledged that they

⁴ Former Article 119 (Treaty of Rome) on equal pay was renumbered Article 141 and its scope was extended: "The Council (...) shall adopt measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (...)".

strengthened the directive. There was no blocking minority in the Council. In April 2002, the Council and the European Parliament reached agreement on the directive.

New procedures indeed seem to create a window of opportunity for new gender equality policies.⁵ However, the codecision procedure does not apply to many fields where gender equality would benefit from supranational legal instruments. All proposals based on Article 13, which allows the Commission to take measures to combat discrimination outside the workplace, are to be adopted by unanimity after consultation of the Parliament. The Commission proposal to ban gender discrimination in the access to and supply of goods and services (November 2003) thus is expected to be watered down strongly. *A suivre*.

Shift 3: A new strategy – new opportunities?

The Treaty of Amsterdam not only absorbed the Social Agreement but also introduced gender mainstreaming as a new strategy for the promotion of gender equality (Article 3.2 EC). Gender mainstreaming means ‘integration of gender equality considerations in all activities and policies at all levels’ (CEC 1998a: 22). The concept first appeared in Commission documents in 1989, in a working paper by Helle Jacobsen, a Danish expert on equal opportunities. The concept met with scepticism among ‘women’s advocates’ in the Commission and the European Parliament (Stratigaki 2000). They feared that such a vague strategy would lead to the abandonment of specific actions on behalf of women. However, the strategy was accepted due to simultaneous triple pressure for mainstreaming. There was pressure at the global level, as the fourth United Nations World Conference on Women in Beijing in 1995 provided a platform for political support for the idea. There was pressure at the European level by forerunner states (1995, EU enlargement with Sweden and Finland), and by the Scandinavian Commissioners and the female Commissioners within the new Commission (1995, Santer) to come up with a new strategy. Furthermore, there was pressure at the subnational level by women’s organizations that took home from Beijing the idea of gender mainstreaming and put it on the agenda.

⁵ The codecision procedure also applied to the decision to adopt a programme for Community action to fight violence towards children, young persons and women (the Daphne programme, OJ L 34, 9.2.2000). In fact, the Commission chose to deal with the issue of violence against women – new in supranational instruments other than non-binding declarations and resolutions – basing the decision on the only article in the whole treaty on public health (Article 152 EC).

Gender mainstreaming is a strategy with an ambiguous profile, as may be gathered from the reluctant reactions among women's advocates. On the one hand, it is a "demanding strategy" (Bretherton 2001: 61), as successful implementation requires that "a gender equality perspective is incorporated in all policies at all levels and at all stages, by the actors normally involved in policymaking" (Council of Europe 1998:7). Mainstreaming goes further than the promotion of equality: it is not about "balancing the statistics", but about the promotion of long-lasting changes in the roles and behaviours not only of women but also of men. It widens the scope for agenda setting by the European Commission, as it allows the Commission to introduce gender concerns in all policy domains.

On the other hand, mainstreaming is a strategy, and not an instrument that is legally binding upon all actors concerned. This raises the question, whether this strategy effectively constrains actors.⁶ Commission officials who are routinely involved in policymaking in many different areas have to be convinced of the importance of gender equality. In fact, mainstreaming may reduce the chances of adoption of their policy proposals as it increases the costs of their proposals when a gender impact assessment reveals that an apparently gender-neutral policy will have unintended gender-specific negative consequences. They have to be 'seduced' by strategical framing into implementing gender mainstreaming – which is therefore referred to by Verloo as a 'velvet revolution' (Verloo 2001). It is to be expected that Member States will mainstream a policy when mainstreaming leads to only marginal changes in the distribution of costs and benefits between and within states. They will ignore it, when mainstreaming would substantially increase the costs or lead to a redistribution of benefits between and within states. Still, Member States are concerned about their prestige. If the refusal to apply gender mainstreaming damages their prestige, the costs of non-mainstreaming may tip the balance to implementation of the strategy. This presupposes strong monitoring. Therefore, the effectiveness of mainstreaming as a strategy depends on the extent to which its implementation is controlled and enforced. The assessment of the fate of 'facet policy', a first wave of mainstreaming in the Netherlands between 1975 and 1995, learns that conceptual clarity, political and

⁶ Lately, strategies seem to proliferate: the European employment strategy (voluntary process of peer review) aims to make labour markets more flexible and to boost employment (1997), and the Lisbon Strategy (2000) aims to give the EU 'the most dynamic economy in the world' by 2010. The results are modest (Bomberg and Stubb 2003:144-45).

bureaucratic support, and a set of specific instruments are required to implement the strategy successfully (Verloo 2001). Mainstreaming has a huge potential – but is the potential realized?

The Commission will monitor progress in an annual *Report on equality between women and men* to the Spring Summit of the European Council. In the first edition of the report, the monitoring of mainstreaming is limited to the remark that the strategy “has started to be implemented (...) both in the Member States and at EU level” (Commission 2004b:10). However, there is no mention of the level of implementation by individual Commission services or individual Member States: there is no blaming – and no shaming. The pressure of the monitoring procedure is therefore not such that it increases the costs of non-mainstreaming for Member States. The European Commission ‘Gender Scoreboard’ shows mixed results as regards the implementation of gender mainstreaming by the Commission services (Commission 2001). There are positive results in ‘traditionally gender sensitive policy domains’ as education and the field of development cooperation. Moreover, some previously ‘gender-blind’ services, namely Trade, Environment, Internal Market, and EcoFin, “for the first time ever” have taken gender equality initiatives. Optimism is tempered, however, by the fact that some services continue “to do practically nothing”, “apart from paying lip service” (Commission 2001). The section on the gender balance in committees and expert groups shows that the target of 40% minimum participation of women is attained only in the fields of Education & Culture and Employment. Pollack and Hafner-Burton (2000) explain the uneven implementation of gender mainstreaming across Commission services mainly by two factors. The first factor is the resonance between the proposed frame (mainstreaming being interventionist, solidarity-oriented) and the dominant frame of the Directorate-General (interventionist or non-interventionist, solidarity-oriented or neo-liberal, etc.). This factor can also be ‘translated’ as the ideological costs and benefits attached to a proposal of policy mainstreaming. The second factor is the openness or the political opportunities offered by the EU institutions involved (the extent to which the institution is open to NGO’s). This factor can be ‘translated’ as the political costs and benefits attached to a proposal. Therefore, the ideological and political costs or benefits vary between Commission services. A policy field will be more ‘gender mainstreamed’ when ideological and political benefits are higher than the costs.

Bretherton, who investigated the implementation of mainstreaming in the accession process of the Central and East European countries (CEEC),⁷ confirms the findings of Pollack and Hafner-Burton. As the CEEC had to absorb the full *acquis*, the accession process offered an occasion to apply mainstreaming transversally to all “chapters”. Was there substantial pressure within the Commission to apply gender mainstreaming to the accession process? On the contrary, it was even argued that social policy aspects of the *acquis* should be set aside to facilitate accession (Bretherton 2001). The Commission did not accept the idea of a phased adoption of the *acquis*, but the services involved did not apply gender mainstreaming either – neither in the Agenda 2000 nor in the individual countries reports. The crucial, coordinating service during the enlargement negotiations was External Relations, where a lack of awareness and expertise inhibited the promotion of gender mainstreaming (Bretherton 2001:75). It is telling that the service did not reply at all to the ‘Scoreboard survey’ on mainstreaming (Commission 2001). Pressure in favour of gender mainstreaming came only from DG Employment and Commissioner Anna Diamantopoulou, and the European Parliament. The ideological and political benefits of mainstreaming were minimal. The fact that the Commission made no gender impact assessments in the framework of the accession negotiations is even more unfortunate as the status of women in CEEC has deteriorated during the transition period.

Not only at the supranational level are the prospects for ‘mainstreaming’ mixed, but also at the national level. The ambiguity of mainstreaming provisions makes their effectiveness dependent on the national context (see also Verloo 2001 on the limited exportability of the Dutch Gender Impact Assessment to another country, for instance Flanders/Belgium). As Stratigaki aptly summarizes, only in Scandinavian countries, reconciliation of paid work and family life means “more men take care of their children” rather than “fewer women are in full-time employment” (Stratigaki 2000:47). Differences are to be expected between countries and policy domains, according to the costs attached to mainstreaming (political, economic, and ideological costs).

Summarizing the argument, gender mainstreaming has the potential to widen the scope of gender equality policies and to result in costly policies. However, the procedures attached to it enable all actors unwilling to support progress in the field of

⁷ On 1 May 2004, eight CEEC became member of the EU (as well as the island states Cyprus and Malta): Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, and Slovenia.

gender equality to get away with lip service, whereas supporters of mainstreaming have no means to put effective pressure on Member States and to ‘sandwich’ them.

Shift 4: shifting the borders of the European Union

The CEEC have to integrate the *acquis* in their legislation, including the gender equality directives. In order to assess whether the accession of CEEC hampers or supports the development of new gender equality policies, we would have to investigate, first, whether these countries have been willing to adopt costly policies (*acquis*), second, whether there is strong support for equality policies (is it possible to ‘sandwich’ the government?), and third, whether there are forerunner states among them.

I will investigate the situation in Estonia and Poland. I selected Estonia, because it is the only acceding country that was explicitly warned by the Commission because it had not yet transposed EU gender equality directives, and Poland, because it is the only large country among the new member states. The eight CEEC differ strongly in many respects, if only concerning their internal structure (the power relations between central government and lower authorities, between central government and judicial authorities, between government and parliament, between government and society) and material capabilities. I do not assume that the CEEC will vote as a block on gender issues, but I expect that they will make similar political and economic choices, despite the internal differences, due to many similar economic, ideological, and political constraints they face. They share a past as former socialist countries under control from or as part of the Soviet Union, and a sudden transition to democracy and market economy. They also share the consequences of this past.

Poland and Estonia present similar post-transition economic consequences. In Estonia, during the Soviet period the employment rate was high for both sexes, but it has fallen dramatically during the transition to a market economy. In 1989, the employment rate was 82 percent for women, and 87 percent for men. In 2002, it was 62 percent for women, and 69 percent for men (Laas 2003) – which is still above EU-15 average (55,6% for women). In Poland, employment rates are much lower, reaching 46,2% for women. Unemployment figures for women in Estonia are 8,4%, in Poland, 20,9% (Commission 2004a). Equal pay has not been realized, yet. The share of women’s hourly wage out of men’s hourly gross wage amounted in 2000 in Estonia to 76%, in Poland to 85% (Commission 2004a). However, low pay, informal pay and pay without social security are considered more serious social problems than unequal pay.

According to Laas, there are no debates on the gender pay gap: 'Women earn less than men. It is normal. Everybody knows' (Laas 2003).

In both countries, people are suspicious about the concept of gender equality. In 2002, a public opinion poll showed little support for ideas about gender equality (28% agreed with the statement that equality between women and men is an important problem in Estonia, 44% disagreed). People feel attached to traditional gender roles (Laas 2003). In Poland, like in Estonia, under communism, "the myth of equal rights for men and women was prevalent" (Fuszara (2002). The Constitution (1952) guaranteed legal equality. Employment was considered the main strategy to achieve equal rights for women: "Everyone, men and women alike, was expected to work" (Fuszara 2002:4). However, the Polish tradition and the Catholic Church supported a model of strictly defined gender rules, where women took care of the children. Moreover, the Poles treasured the family as one of the few environments where they experienced some freedom. The family model conflicted with the equality model. Therefore, special regulations were developed for women so that they could reconcile work and family.

Paradoxically, as Fuszara points out, the fact that women were given formal equality in politics and the labour market, blocked mobilization for de facto equality. Women did not have to fight for their rights – and could not fight for their rights. Women's organizations were set up and controlled by the authorities. As far as women were represented in decision-making bodies, they played traditional roles. In the political arena, there was no discussion on gender. This situation continued after communism disappeared, as results from the analysis of the election programs of the principal political parties in 1993, 1997, and 2001 (Fuszara and Tomaszewska 2003). The majority of the parties did not mention women's issues at all. Some parties (AWS) only mentioned women in connection with family issues. The only parties that mentioned women's issues were the Labour Union and the Social-Democratic Alliance.

Organizing in favour of gender equality thus was associated with communist rule, until in the 1990s, women's organizations started to flourish again (Estonia: 190 women NGO's, Poland: 300 women NGO's). In Poland, the women's lobby is divided between a traditional, catholic wing and a feminist wing. In both countries, 'Beijing' played a mobilizing role and contributed to the development of cooperation between the government and NGO's. In 1995, the Polish government established a Forum for cooperation between NGO's and the Government Plenipotentiary for Family and Women's Affairs. The Forum played mainly a consultative role. It gave its opinion on

changes in the labour code, the Equal Opportunities Act, and the programme of activities adopted in order to implement the Beijing Platform. In 1997, after the new government closed down the office of the Plenipotentiary, the Forum took up permanent cooperation with the Parliamentary Women's Group and concentrated on the preparation of shadow reports. Currently, there is again a Plenipotentiary, this time for 'Equal Opportunities for Women and Men', and for the first time a woman who formerly was active in a feminist NGO, has been appointed to this position. She has established a Council for the cooperation with women's NGO's.

Table 1. Cost and benefits of gender equality policies

	Estonia	Poland
Political benefits: pressure in favour of gender equality policies	medium benefits → pressure by - Riigikogu Women's Association - Roundtable of Women's Associations of Political parties - Women Research Centres (Tallinn, Tartu)	medium benefits → pressure by - Women's Parliamentary Group - Women's NGO's – feminist wing - SLD (left-wing party) - Forum - Plenipotentiary
Political costs: pressure against gender equality policies	medium costs → pressure 'against' by - public opinion	high costs → strong pressure 'against' by - Women's NGO's – traditional/catholic wing - Trade unions - AWS (conservative party) - Catholic Church
Economic costs*	high costs - pay gap: 24 % - unemployment: 8.4 %	high costs - pay gap: 15 % - unemployment: 20.9 %
Ideological costs/benefits: gender equality frame compatible with dominant frame	high costs → incompatible - traditional gender roles - non-intervention in home and family	high costs → incompatible - traditional gender roles - non-intervention in home and family
total	- costs >= benefits (?)	- costs > benefits

*Source: Commission 2004a

The process of EU accession and the UN CEDAW process have contributed to the introduction of standards on gender equality in Estonia and Poland. Both countries have made efforts to harmonize legislation with the EU *acquis*. However, both had trouble with the adoption of a Gender Equality Act. In Estonia, the Act was under discussion from 2001-2004, in three different versions. On April 7, 2004, the Riigikogu (Estonian Parliament; share of women: 1992, 5%; 2003, 18%) finally adopted the Act. Until then,

Estonia lacked a legal definition of direct and indirect discrimination. The lack of effective mechanisms for implementation remains a problem. Estonia transposed the mainstreaming article by a reciprocal understanding memorandum with the Commission in 2002. The Estonian Bureau of Gender Equality (Ministry of Social Affairs) is in charge of the coordination of mainstreaming. However, its resources are limited (both financially and in staff – two employees) and its activities have been limited to training officials. Mainstreaming has been mainly “rhetoric” according to Estonian expert on gender equality Anu Laas (email to the author). In Poland, the Women’s Parliamentary Group was the driving force behind the Equal Opportunities Act. The European Parliament “deplores the fact that the legislation is not scheduled to come into force before accession” (EP 2002:§§116 & 121). Poland has established a secretariat of state for equal status of women and men, but has not created the necessary institutional capacity to ensure genuine gender equality. Transposition of the *acquis* in the field of equality is not a problem, but the effective implementation will require further efforts. Fuszara and Tomaszewska observe that the current government has fulfilled its promises only when the political costs remain limited, like the appointment of a Plenipotentiary for Equality between Women and Men.

Summarizing, the chances for progress in the field of gender equality seem to be slightly better in Estonia than in Poland, where political costs are higher and the economic conditions are less favourable. An assessment of the implementation of the Gender Equality Act in both countries (adopted too recently to give even preliminary results) could indicate whether Estonia and Poland are ready to implement costly policies. Another indicator would be the elimination of protective measures for women in the labour market in Poland or the elimination of the list with 40 jobs prohibited to women in Estonia (both demanded by Directive 76/207). As for the approval of new supranational gender equality policies and the implementation of mainstreaming, there does not seem to be a ‘sandwich’, as pressure in favour for such policies is lacking, whereas pressure against such policies is strong. Governments in the CEEC maintain that existing legislation provides adequate protection for women, and both political elites and public opinion feel that gender equality is a low priority (Bretherton 2001:65-66). Therefore, Polish and Estonian governments are not expected to support costly policies in this domain.

Conclusion

After ‘Maastricht’, new procedures were introduced for equality issues. They seemingly shifted the action in this domain from state actors to transnational non-state actors and European Parliament, and from coercive to consensus-oriented (‘seduction’-oriented) instruments. I investigated these shifts: may we expect advances (the snake), or does the status quo prevail (the snail)? I argued that the shift involving the social partners and the shift to less coercive instruments favour the snail, whereas the shift involving the European Parliament and removing the unanimity rule favours the snake. The overall performance in the domain of gender equality, however, is expected to be slowed down by the accession of the CEEC.

References

- Bergamaschi, M. (2000), ‘The Gender Perspective in the Policies on European Trade Unions’, in M. Rossilli (ed.), *Gender Policies in the European Union*, New York: Peter Lang
- Bretherton, C. (2001), ‘Gender mainstreaming and EU enlargement: swimming against the tide?’, *Journal of European Public Policy* 8:1, 60-81.
- Commission (2004b), *Report on equality between women and men*, COM(2004)115 fin.
- Commission (2004a), *Employment in Europe 2003*.
europa.eu.int/comm/employment_social/employment_analysis/employ_2003_en.htm
- Commission (2003), *Report from the Commission on the implementation of Council Directive 96/34/EC*, COM(2003)358fin.
- Commission (2002), *Regular report on Poland*, www.europa.eu.int/comm/enlargement/
- Commission (2001), *Gender Scoreboard*, COM(2001)119.
- EIRonline (1998), The EU Parental Leave Agreement and Directive: Implications for national law and practice, www.eiro.euofound.eu.int/1998/01/study (19-05-04).
- EIRR, *European Industrial Relations Review*, several issues, 1994 and 1995.
- European Council, Corfu – Presidency Conclusions (1994) and Brussels – Presidency Conclusions (1993), ue.eu.int/cms3_applications/ (19-05-04)
- European Parliament (2002), ‘Resolution on the state of the enlargement negotiations’, A5-0190/2002.
- Falkner, G. (1998), *EU Social Policy in the 1990s. Towards a corporatist policy community*, London: Routledge.
- Fuszara, M (2003), *Work Package 1 and Work Package 3 (Executive Summary), Poland, Enlargement, Gender and Governance (EGG), EU framework 5, Project No: HPSE-CT-2002-00115*, www.qub.ac.uk/egg (03-05-04).
- Fuszara, M. and J. Tomaszewska (2003), *Work Package 2: Analysing Female Visibility (Executive Summary), Poland, Enlargement, Gender and Governance (EGG), EU framework 5, Project No: HPSE-CT-2002-00115*, www.qub.ac.uk/egg (03-05-04).
- Ghilardotti, F. (1996), ‘Opinion of the Committee on Women’s Rights on the Commission proposal for a Council directive on the framework agreement concluded by UNICE, CEEP and ETUC on parental leave’, A4-0064/96.

- Glase, A. (1996), 'Report on the Commission proposal for a Council directive on the framework agreement concluded by UNICE, CEEP and ETUC on parental leave', A4-0064/96.
- Haas, E.B. (1964), *Beyond the Nation-State. Functionalism and International Organization*, Stanford: Stanford University Press.
- Hantrais, L. (2000), 'From equal pay to reconciliation of employment and family life', in L. Hantrais (ed) *Gendered Policies in Europe. Reconciling Employment and Family Life*, Houndmills: Macmillan.
- Laas, A. (2003), 'Executive Summary, Estonia', Enlargement, Gender and Governance (EGG), EU framework 5, Project No: HPSE-CT-2002-00115, Work Package 1.
- Laas, A. (2002), "Equal Pay and Gender Mainstreaming: The Case of Estonia", unpublished paper, presented at ETUI, Brussels, November 18-19, 2002.
- Ostner, I. (2000), 'From equal pay to equal employability' in M. Rossilli (ed.), *Gender Policies in the European Union*, New York: Peter Lang.
- Reuter, S. and A. G. Mazur (2003), 'The Dynamics of French Equality Discourse', in U. Liebert (ed), *Gendering Europeanisation*, Brussels: Lang.
- Sifft, S. (2003), Pushing for Europeanisation: How British Feminists Link with the EU to Promote Parental Rights, in U. Liebert (ed), *Gendering Europeanisation*, Brussels: Lang.
- Sjerps, I. (2000), "Contribution to public hearing on equal treatment for men and women", www.e-quality.nl/sjerps.html (19-10-01)
- Stratigaki, M. (2000), 'The European Union and the equal opportunities process', in L. Hantrais (ed.), *Gendered Policies in Europe. Reconciling Employment and Family Life*, Houndmills: Macmillan.
- Van der Vleuten, A. (2001), *Dure vrouwen, Dwarse staten. Een institutioneel-realistische benadering van de totstandkoming en implementatie van Europees beleid*. Nijmegen: Nijmegen University Press.
- Verloo, M. (2001), *Another Velvet Revolution? Gender mainstreaming and the politics of implementation*, IWM Working Paper No. 5/2001, Vienna.

Appendix: EU Gender Equality Policies – an Overview

Treaty Articles

- Art. 2 EC Treaty (since 1997)
- Art. 3 EC Treaty (since 1997)
- Art. 13 EC Treaty (since 1997)
- Art. 137 EC Treaty (ex Art 118, but until 1997, no reference to gender equality)
- Art. 141 EC Treaty (ex Art 119; since 1957)

Directives

- Directive 75/117 on the approximation of the laws of the Member States relating to the application of the principle of **equal pay** for men and women [consultation, unanimity];
- Directive 76/207 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and **working conditions**; [consultation, unanimity]

- Directive 79/7 on the progressive implementation of the principle of equal treatment for men and women in matters of **social security**; [consultation, unanimity]
- Directive 86/378 on the implementation of the principle of equal treatment for men and women in **occupational security schemes**; [consultation, unanimity]
- Directive 86/613 on the application of the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of **self-employed women** during pregnancy and motherhood; [consultation, unanimity]
- Directive 96/34 on the framework agreement on **parental leave** concluded by UNICE, CEEP and the ETUC;
- Directive 96/97 amending directive 86/378 on the implementation of the principle of equal treatment for men and women in **occupational security schemes**; [consultation, unanimity]
- Directive 97/80 on the **burden of proof** in cases of discrimination based on sex; [cooperation, QMV]
- Directive 2002/73/EC amending directive 76/207 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and **working conditions** [codecision, QMV]

In the field of worker protection:

- Directive 92/85 on the introduction of measures to encourage improvements in the safety and health at work of **pregnant workers** and workers who have recently given birth or are breastfeeding [cooperation]
- Directive 97/81 concerning the framework agreement on **part-time work** concluded by UNICE, CEEP and the ETUC.