

Published by

OPEN SOCIETY INSTITUTE

Október 6. u. 12.
H-1051 Budapest
Hungary

400 West 59th Street
New York, NY 10019
USA

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Október 6. u. 12.
H-1051 Budapest
Hungary

Website
<www.soros.org/women>

ISBN: 1-891385-43-7

Library of Congress Cataloging-in-Publication Data
A CIP catalog record for this book is available upon request.

Copies of the book can be ordered from womenpro@osi.hu

Printed in Gyoma, Hungary, April 2005
Design & Layout by Q.E.D. Publishing

Equal Opportunities for Women and Men

*Monitoring law and practice in
new member states and accession
countries of the European Union*

Overview

BULGARIA
CZECH REPUBLIC
ESTONIA
HUNGARY
LITHUANIA
POLAND
ROMANIA
SLOVAKIA
TURKEY

2005

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Preface

BRINGING THE EU HOME

“Bringing the EU Home” is a three-year project (2004–2006) conceptualized as a follow up to the Program on Equal Opportunities for Women and Men in the European Accession Process (EOWM), which was a joint initiative of the Open Society Foundation Romania and the Network Women’s Program of the Open Society Institute*. The EOWM projects stemmed from the Open Society Institute project to monitor the progress of candidate countries as they prepared themselves for integration into the European Union and ensured that they met the Copenhagen political criteria, particularly in relation to the independence of the judiciary, minorities’ rights, and anti-corruption. Given the *acquis communautaire* in the field of equal opportunities for women and men, which accession countries are required to adopt and comply with, an independent programme, EUMAP, to evaluate the status of accession countries from this perspective was developed.

An assessment of the status of equal opportunities, *de jure* and *de facto*, was carried out in seven of the ten candidate countries: Bulgaria, the Czech Republic, Estonia, Hungary, Lithuania, Poland and Romania. The EU Directives on equal opportunities provided the framework for monitoring and analyzing corresponding legislation, institutions and practices. The Directives related to the principle of equal pay for work of equal value; equal treatment as regards employment; protection of pregnant, and breastfeeding women, and women who recently gave birth; the burden of proof in cases of sex-based discrimination, and non-discrimination against part-time workers were analyzed in 2001. The remaining Directives on self-employed workers, parental leave, and social security schemes were assessed in 2002.

The final report, including an overview and executive summary for each country, was published in November 2002. Each country report and executive summary was translated into the national language and used as an advocacy/research tool. 2002 and 2003 were years of intensive outreach efforts, both nationally and at the EU level. Countries organized roundtables and meetings for NGOs, government officials, lawyers, and media to publicize the findings of the reports. The English version was used for advocacy at the EU level, and sent to members of Parliament from EU and candidate countries. Country information was presented twice at meetings in Brussels, and the final reports were launched at the European Parliament in November 2002.

* Monitoring the EU Accession Process: Equal Opportunities for Women and Men 2002, <www.eonet.ro>

The project “Bringing the EU Home” aims to promote awareness, advocacy and enforcement of equal opportunity legislation at the national level and to build the capacity of national actors in civil society to use EU-level mechanisms effectively. In this context, new, updated monitoring was carried out in 2004.

A detailed assessment of the legislative developments, institutional mechanisms, policies, programs and research at the national level was carried out in Bulgaria, the Czech Republic, Estonia, Hungary, Lithuania, Poland, Romania, Slovakia* and Turkey.*

Each country report contains key recommendations related to legislation, institutional mechanisms, policies and programs, awareness raising and research initiatives and outlines specific areas of concern. On-going updates will be made to the reports and available online, in order to ensure different groups can access the most current information easily.

The project further aims to help raise the significance of equal opportunities on the European agenda within new member states and within the process of on-going and new accession negotiations, and create a unique platform for new member states and accession countries. It is therefore about “bringing the EU home.”

We would like to thank all individuals who were involved in this monitoring project and whose invaluable contributions and support made the publication of these reports possible.

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Special thanks to Gabriella Kiss, Alona Bruce, Miriam Anati and Marla Swanson from the Open Society Institute.

The Network Women's Program of the Open Society Institute would like to acknowledge the unique role of Nicole Watson in writing all Executive Summaries.

INTRODUCTION

1. An Overview of Gender Equality Legislation and Policy in the European Union

Gender equality usually refers to a situation in which women and men have equal rights and obligations and are treated the same, irrespective of social status. Rather a modern concept, 'gender equality' is still politically controversial in many countries. Within the EU space, the principle of equal treatment developed from a rather isolated legal provision in the 1960s, to a currently significant and meaningful *Acquis Communautaire* in the area of equality. However, as a critical element of economic and social cohesion, gender equality at the EU level has progressed in small steps throughout the integration process.

The EU has produced an important body of legislation in the field of gender equality. The principle of equal pay was introduced in the Treaty of Rome in 1957. Forty years later, the 1997 Amsterdam Treaty significantly enhanced the primary law by giving the Community legislative body a specific legal basis to take action in the area of equal opportunities and equal treatment between women and men.¹ In particular, Article 141² is a critical legal provision, as the European Court of Justice has stated³ that it represents part of the social objectives of the Community, and that the Community is not perceived as only an economic union, but at the same time a union aiming to

¹ Articles 13, 137 and 141 of the Amsterdam Treaty.

² "1. Each Member state shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied. 2. For the purpose of this article, "pay" means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his employment, from his employer. Equal pay without discrimination based on sex means: (a) that pay for the same work at pieces rates shall be calculated on the basis of the same unit of measurement; (b) that pay for the work at time rates shall be the same for the same job. 3. The Council, acting in accordance with the procedure referred to in Article 251, and after consulting the Economic and Social Committee, 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, including the principle of equal pay for equal work or work of equal value. 4. With a view to ensuring full equality in practice between men and women in working life, the principle of equal treatment shall not prevent any Member State from maintaining or adopting measures providing for specific advantages in order to make it easier for the underrepresented sex to pursue a vocational activity or to prevent or compensate for disadvantaged in professional careers."

³ Judgment of the European Court of Justice of February 10, 2000, in Case C-270/97 *Deutsche Post AG v Elisabeth Sievers* and Case C-271/97 *Deutsche Post AG v Brunhilde Schrage*, joined cases C-270/97 and C-271/97. ECR 2000 p. I-00929.

ensure social progress and improvements in the living and working conditions of its citizens. Furthermore, the *Charter of Fundamental Rights of the European Union*⁴ provides for equality between women and men as a fundamental principle.⁵ In terms of secondary legislation, the 1975 Directive on Equal Pay and the 1976 Directive on Equal Treatment in Employment were important legal tools in protecting equal opportunities for women and men in professional life as they relate to equal pay for work of equal value, access to employment, vocational training, promotion and working conditions. Further directives on equal treatment for women and men in matters of social security schemes, occupational social security schemes, maternity and parental leave, and part-time workers completed the legal picture in terms of providing the basis for challenging sex-based discrimination. Following the case law developed by the European Court of Justice and in order to make Community law effective, another very important piece of legislation was added in 1997 that shifted the burden of proof in cases of sex based discrimination, namely Directive 97/80/EC.⁶ This Directive is particularly important as it raises the concept of indirect discrimination.⁷ In recent years the European Court of Justice has issued over 50 judgments further consolidating the legal framework on equal opportunities for women and men.

In addition to the primary and secondary legal frameworks, important soft law instruments were also articulated. *The Community Framework Strategy on Gender Equality (2001–2005)*⁸ represents an important and strategic document in relation to gender equality, as it articulates the Commission's action framework aimed at "eliminating inequalities and promoting equality between women and men" by addressing a number of critical objectives: promoting gender equality in economic life, equal participation and representation, equal access and full enjoyment of social rights

⁴ The Charter of Fundamental Rights of the European Union was signed in Nice on December 7, 2000, *Official Journal of the European Communities* (hereinafter *Official Journal*), C 364 of 18.12.2000, pp. 0001–0022, available at http://www.europarl.eu.int/charter/pdf/text_en.pdf.

⁵ *Ibid.*, Article 23.

⁶ Council Directive 97/80/EC of 15 December 1997 on the Burden of Proof in Cases of Discrimination Based on Sex as amended by Council Directive 98/52/EC of 13 July 1998 on the Extension of Directive 97/80/EC on the Burden of Proof in Cases of Discrimination Based on Sex to the United Kingdom of Great Britain and Northern Ireland.

⁷ The concept of *indirect discrimination* was further developed by the Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002.

⁸ European Commission, *Towards a Community Framework Strategy on Gender Equality, 2001–2005* (Brussels: EC Employment and Social Affairs DG, June 7, 2000), available as COM(2000)335/final at http://europa.eu.int/comm/employment_social/equ_opp/strategy/com2000_335_en.pdf.

for women and men, gender equality in civil life, change of gender roles and stereotypes, as well as gender equality policy-making mechanisms.

The European Employment Strategy,⁹ a key component of the Lisbon Strategy, represents the center of EU policy through its objectives of full employment, quality of work and productivity, employment and social cohesion. A well functioning labor market should be gender inclusive, reduce the long-term unemployment that women are more subjected to than men and address women's financial dependence by reducing the gender pay gap. Without these minimum requirements with regard to women's presence in the labor market, the European Employment Strategy will be significantly less successful. Since 1995 the European Commission has adopted a dual approach regarding the articulated promotion of gender equality. Such an approach consists of a balanced combination of specific policy measures in favor of the under-represented sex, and of a structured gender mainstreaming policy. In the Amsterdam Treaty, the EU committed itself to mainstreaming gender equality into all policies and expressly recognized positive action in favor of the unrepresented sex in professional activity. However, evidence shows clearly that sexism and discrimination against women are unfortunately still well established in professional life.

2. KEY DEBATES OVER GENDER EQUALITY LEGISLATION

2.1 Revising the 1976 Equal Treatment in Employment Directive

Taking into account the new developments generated by the Amsterdam Treaty, the case law developed by the European Court of Justice in the last years and the need for connecting a relatively old legal language to the new social realities, the 1976 Directive on Equal Treatment in Employment was amended by a Directive in 2002.¹⁰ The revision process was also influenced by the adoption of similar legislation in the field of

⁹ For more details, see http://europa.eu.int/comm/employment_social/employment_strategy/index_en.htm.

¹⁰ Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC 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. See *Official Journal* L 269 of 05.10.2002, pp. 0015–0020, full text available at http://europa.eu.int/eur-lex/pri/en/oj/dat/2002/l_269/l_26920021005en00150020.pdf.

anti-discrimination.¹¹ The Directive 2002/73/EC has achieved some critical and important elements in relation to equal treatment of women and men, such as preventing sexual harassment, safeguarding women's and men's rights on their return from maternity and paternity leave, protecting victims of harassment and sexual harassment, and setting up national governmental bodies to promote equal treatment of women and men.

2.1.1 Changes Introduced by Directive 2002/73/EC

2.1.1.1 *Definition of Sexual Harassment*

For the first time at the EU level, the social reality of sexual harassment is legally defined as a situation in which “any form of unwanted verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading or offensive environment.”¹² According to the legal wording of Directive 2002/73/EC, sexual harassment within the meaning of this Directive is a form of sex-based discrimination.

2.1.1.2 *Proactive Measures to Prevent Sexual Harassment in the Workplace*

According to Article 2(5) of the revised Directive, based on national law, collective agreements or practice, the Member States shall encourage “employers and those responsible for access to vocational training to take measures to prevent all forms of discrimination on grounds of sex, in particular harassment and sexual harassment in the workplace.” In this regard, the Member States are required to introduce measures to prevent sexual harassment in the workplace, by encouraging employers to promote equal treatment for women and men in a planned and systematic way, and to also draft equality plans on a regular basis. In accordance with their national legislation, Member States shall take measures to promote social dialogue in order to enhance the equal treatment enforcement aspects, “including through the monitoring of workplace

¹¹ Council Directive 2000/43/EC Implementing the Principle of Equal Treatment Irrespective of Racial and Ethnic Origin (*Official Journal* L 189 of 19.7.2000, pp. 0022–0026); Council Directive 2000/78/EC Establishing a General Framework for Equal Treatment in Employment and Occupation (*Official Journal* L 303 of 2.12.2000, pp. 0016–0022), prohibiting discrimination on grounds of religion and belief, disability, age and sexual orientation in the labor market.

¹² Directive 2002/73/EC, Article 1(2) (replacing Article 2(2) of the amended Directive 76/207/EEC).

practices, collective agreements, codes of conduct, research or exchange of experiences and good practices.”¹³

2.1.1.3 Protection for Women on Maternity Leave and Extending Protection to Adoptive Parents

The reinforcement of protection for women on maternity leave and extending protection to adoptive parents in those Member States that recognize such rights¹⁴ represent further innovative elements contained in Directive 2002/73/EC. In relation to the legal provisions on maternity leave, the links with Directive 92/85/EC¹⁵ have been clarified by reinforcing the right of women who have given birth to return to their job, or to an equivalent position.

2.1.1.4 National Bodies to Promote Equal Treatment for Women and Men

Directive 2002/73/EC establishes the framework for setting up an independent body or bodies at the national level that contribute to the “promotion, analysis, monitoring and support of the equal treatment of all persons without discrimination on the grounds of sex.”¹⁶ The minimum requirements set out by Directive 2002/73/EC for the independent body/bodies designed to promote the principle of equal treatment focus on:

- pursuing claims on behalf of victims of discrimination through an administrative or judicial procedure;
- conducting independent surveys concerning discrimination; and
- publishing independent reports and making recommendations on any issues relating to discrimination.

¹³ Directive 2002/73/EC, Article 1(7) (adding Article 8b(1) to the amended Directive 76/207/EEC).

¹⁴ Directive 2002/73/EC, Article 1(2) (replacing Article 2(7) of the amended Directive 76/207/EEC).

¹⁵ Council Directive 92/85/EEC of 19 October 1992 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, *Official Journal* L 347 of 28.11.1992, available through the Celex website.

¹⁶ Directive 2002/73/EC, Article 1(7) (adding Article 8a(1) to the amended Directive 76/207/EEC).

2.1.2 The Impact of the Revised 1976 Equal Treatment in Employment Directive

Taking into consideration the legal standards provided for in the revised Directive, there are concrete legal provisions available for Member States to enhance their national legislation on equal treatment in relation to employment. However, in light of the first report to be presented by the Commission to the European Parliament and the Council on the implementation of this Directive, it will be crucial how Member States agree to put in practice the established legal standards, especially in terms of providing specific instruments to implement the Directive, such as:

- establishing monitoring procedures to observe workplace practice in terms of reducing sex based discrimination in employment;
- elaborating methods for encouraging employers to provide information on equal treatment for women and men at regular intervals;
- making procedures available at the national level for establishing independent governmental bodies with adequate competence for promoting and monitoring equal treatment without discrimination based on sex, as well as articulated mechanisms for assuring the real independence of these bodies;
- promoting explicit and consistent procedures on behalf of governmental institutions in the Member States to ensure dialogue with the appropriate non-governmental organizations which have a legitimate interest in contributing to the fight against discrimination on grounds of sex. In this regard, evidence from non-governmental organizations in the Member States shows that this cooperation is usually rather formal. In addition, particularly in the ten new Member States, the meaning of “non-governmental organization having a legitimate interest in contributing to the fight against sex based discrimination” in national legislation is not always clearly agreed upon.

As stipulated in Article 2 of the Directive, Member States shall bring into force legal regulations and administrative measures necessary to comply with Directive 2002/73/EC by October 5, 2005 at the latest. Furthermore, the Member States are to provide the Commission with all the information necessary for the Commission to report to the European Parliament and the Council on the application of this Directive within a three-year period.

2.2 Simplification and Improvement of Legislation in the Area of Equal Treatment between Women and Men: The Recast Directive

In order for the secondary legislation on equal opportunities and equal treatment for women and men to integrate the case law developed by the European Court of Justice and the legal developments generated by the Amsterdam Treaty, to be more readable and to assure more legal clarity, a simplifying and updating process was initiated in 2003. To this end, an Options Paper was prepared so that various interested stakeholders would be informed of the possible approaches to be undertaken for improving the legislation in the field of equal treatment between women and men.¹⁷ A web consultation was also launched. The results of the web consultation, as well as the results of the informal meeting held with experts from Member States, EFTA countries and Accession Countries indicated that the recasting option would be the best solution. Besides the clear presentation of the legal provisions in a single improved text, a necessary achievement of the recasting approach would also be “the necessary support to accelerate the effective implementation of equal treatment in order to reach Community socio-economic policy goals.”¹⁸ The need for simplifying and clarifying the existing legislation was also endorsed by the conclusions of the November 2004 Expert Conference dedicated to the *Progressive Implementation and New Developments in European Gender Equality Law* as follows: “From the legislative point of view, it can be said that an already large body of legal texts exists. However, it is quite chaotic and made largely of incoherent bits and pieces. This results in individuals being unable to make sense of their rights and duties. Not only individuals are confused, but also experts who are supposed to work with legislation and apply in everyday practice.”¹⁹

¹⁷ European Commission, *Simplification and Improvement of Legislation in the Area of Equal Treatment between Men and Women* (Brussels: EC Employment and Social Affairs DG, 2003), the Options Paper is available at http://europa.eu.int/comm/employment_social/news/2003/jul/consultation_en.html.

The options proposed for the legislative clarification were: a) consolidating the legislation on equal treatment between women and men, defined as a rather mechanical process, without altering the initial texts; b) codifying the legislation on equal treatment between women and men, by bringing the texts together in a coherent new single legal text, by deleting overlapping legal provisions; c) recasting the legislation on equal treatment between women and men, which implies the elaboration of a new legal text that incorporates both the amendments brought to the previous act and the provisions that remain unchanged.

¹⁸ European Commission, *Proposal for a Directive of the European Parliament and of the Council on the Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation* (recast version) (Brussels: European Commission, April 21, 2004), p. 5, available as COM(2004)279/final at http://europa.eu.int/eur-lex/en/com/pdf/2004/com2004_0279en01.pdf.

¹⁹ Expert conference on *Progressive Implementation and New Developments in European Gender Equality Law*, the Hague, Netherlands, November 18-20, 2004, Conclusions Paper.

The current approach on simplifying and clarifying the equal treatment for women and men legislation is vital for a harmonious settlement of the legal standards in the matter of employment and occupation, and for charting the progress of addressing the issues under discussion as they were interpreted by the European Court of Justice. In this regard, among the innovative aspects to be comprised into the new recast Directive, the proposed extension of the gender mainstreaming obligation to the other areas of equal treatment covered by the proposal, and the proposed extension of the burden of proof to all areas falling within the material scope of the proposal are of particular importance.²⁰ The recasting of the Directive in relation to the principle of equal pay for work of equal value was expressed as particularly important.

The 1975 Directive on Equal Pay does not reflect the interpretation of the concepts of 'equal pay' and 'work of equal value' in the recent developments of the European Court of Justice. The Court has stated that the concept of 'work of equal value' implies the same remuneration for women and men, and as such male and female workers shall be in comparable situations. "In this context the principle of equal pay [...] does not preclude the making of a lump-sum payment exclusively to female workers who take maternity leave where that payment is designed to offset the occupational disadvantages which arise for those workers as a result of their being away from work²¹, because their particular situation due to maternity cannot be compared with that of female workers."²²

The new Directive proposal is structured in five titles, containing a very important title on horizontal provisions referring to the defense of rights and bodies for the promotion of equal treatment and social dialogue. It is important to observe that the national bodies established in the Member States as they were described by Directive 2002/73/EC in matters related to access to employment, vocational training and promotion and working conditions, shall also cover matters related to pay and social security schemes. The recast Directive was on the 2004 December agenda of the Council of the European Union, together with the decision on the programs concerning gender equality and the topic of the implementation of the European Union of the Beijing Platform for Action.

²⁰ As these aspects were inserted by the Directive 2002/73/EC.

²¹ Judgment of the Court of September 16, 1999 in Case C-218/98, *Oumar Dabo Abdoulaye and Others v Regie nationale des usines Renault SA*, ECR 1999 I p. 5723.

²² European Commission, *Proposal for a Directive*, op. cit. p. 8

2.3 Gender Equality outside the Labor Market: The Article 13 Directive

In the 2000 European Commission's Communication setting out a Community framework strategy on gender equality,²³ under the objective of promoting equal access and full enjoyment of social rights for women and men, the first indicated action was established for proposing a Directive based on Article 13 of the Amsterdam Treaty, aimed at ensuring equal treatment for women and men in matters other than occupation and employment. On November 5, 2003 a proposal for a Council Directive based on Article 13 of the EC Treaty, focusing on the prohibition of discrimination on grounds of sex in the access to and provision of goods and services, was presented by the European Commission.²⁴ The negotiations between Member States were long and difficult and a political agreement was reached under the Dutch Presidency of the European Union in October 2004.²⁵ Due to a strong resistance from different interest groups and the lack of agreement within the Commission itself, other areas of economic, social and political life were left outside the proposed Directive. The proposal of the new Directive is also known as the 'Article 13 Directive', as it is issued based on Article 13 of the Treaty establishing the European Community.²⁶

Prior to proposing the Article 13 Directive, the Community legal framework was limited to the sphere of employment, although it is documented that sex-based discrimination does not take place only within the labor market. In relation to the subject matter, the proposed Directive shall be applied to "all persons in relation to the access to and the supply of goods and services which are available to the public, including housing, as regards both the public and private sectors, including public bodies."²⁷ It also stipulated that the Directive shall not be applied to education or the content of media and advertising, in particular television advertising.

²³ European Commission, *Towards a Community Framework Strategy on Gender Equality*, op. cit., p. 10.

²⁴ European Commission, *Proposal for a Council Directive Implementing the Principle of Equal Treatment between Women and Men in the Access to and Supply of Goods and Services* (Brussels: EC Secretariat General, November 5, 2003), available as COM(2003)657/final at http://europa.eu.int/comm/secretariat_general/impact/docs/com_2003_0657_f_en.pdf.

²⁵ With the abstention of Germany.

²⁶ The legal provision of the Article 13 of the Treaty establishing the European Community empowers the Council acting on unanimous basis on a proposal from the Commission, and after consultation with the European Parliament, to take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

²⁷ Article 1 on Subject Matter and Scope, Chapter I on General Provisions, see European Commission, *Proposal for a Council Directive*, op. cit.

With the occasion of the debate launched by the European Parliament on the content of the proposed Directive, representatives of non-governmental organizations dealing with gender, media and advertising raised the topic of protecting the dignity of women and men as a matter to be covered by the new legal text. They also highlighted the practices in the field of education, where boys and girls are still seriously affected by gender roles and gender stereotypes, especially in choosing their career. Representatives of media, however, argued that any attempt of regulating the media content would be equivalent to infringing upon media freedom. The debate on these aspects was far from adequately addressed in order to reach the consensus necessary for a new legal text regulating the fields of education and media from a gender equality perspective. Therefore, the Commission decided that “it should *not* now make proposals which would deal with the areas of education, taxation or the content of the media.”²⁸ Despite the unfortunate political message transmitted by the Commission in adopting such a position, it remains optimistic that civil society is able to indicate the problematic areas that should be addressed by new legal initiatives in the field of gender equality. Another optimistic message is the approach initiated by various EU bodies that will benefit from the input of stakeholders active in the field of gender equality.

In terms of the subject matter proposed by the Article 13 Directive, the term ‘services’ refers to services provided against payment. The principle of prohibiting discrimination in the area of goods and services implies that all direct and indirect discrimination is prohibited, including unfavorable treatment due to pregnancy and maternity. Also, according to the Article 2 of the proposed text, “incitement to direct and indirect discrimination on grounds of sex shall be deemed to be discrimination within the meaning of this Directive.” In terms of the minimum requirements established by the proposed Directive, it is stipulated that while Member States can introduce or maintain provisions that are more favorable than those laid down, the Member States cannot reduce the level of protection already granted in the fields covered by the Directive. According to the legal text, the use of sex as a factor in the calculation of premiums and benefits for insurance and related financial services shall be prohibited.

On December 13, 2004, the Council of the European Union, based on the political agreement reached on October 4, 2004,²⁹ unanimously adopted the Directive implementing equal treatment between women and men aimed at extending the principle of equal treatment beyond the area of employment and professional life to

²⁸ European Commission, *Proposal for a Council Directive*, op. cit., p. 5.

²⁹ Council of the European Union, *Employment, Social Policy, Health, and Consumer Affairs, 2606th Council Meeting*, Press Release No 12400/04, Luxembourg, October 4, 2004, available at http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/lisa/82125.pdf.

other areas of everyday life.³⁰ According to the press release of the Council of the European Union, under this Directive the prohibition of discrimination will apply to the persons providing goods and services available to the public and offered outside the area of private and family life. The Directive will apply to both direct and indirect discrimination, including sexual harassment. Direct discrimination will also include less favorable treatment of women due to pregnancy or maternity. Furthermore, it is highlighted that in any event, costs related to pregnancy and maternity should not result in differences in premiums and benefits.

3. ECONOMIC AND SOCIAL EUROPEAN AGENDA: PUTTING GENDER EQUALITY INTO PRACTICE

It is often affirmed in EU documents that the transposition of EU legislation concerning gender equality for women and men is an indispensable condition for EU membership, as it represents an integral part of the human rights paradigm and is a necessary condition for effective institutional development. In terms of social affairs, gender equality has become one of the important components of the European social agenda. It has been stated in various EU documents that Europe needs more and better jobs in order to become the most competitive economic market in the world. In relation to economic growth, it is also obvious that increased female participation in the labor market increases the gross domestic product, since more people are involved in the production system.

Accordingly, both within the human rights paradigm and from an ambitious economic approach, the real achievement of gender equality appears to be an agreed and vital aspect that must be addressed. Both legislation and social and economic policies offer specific instruments and a basis for putting gender equality into practice. However, when examining the human rights perspective, important correlated aspects such as *violence against women* and *trafficking in women* – both of which have important, negative economic consequences – have been left out of the legally binding framework. In terms of social and economic policies, the gender pay gap is still a reality, as well as the lower female employment rate. As the legal aspects were addressed above, this section focuses on gender equality in the economic and social European agenda.

³⁰ Council of the European Union, *Equality between Women and Men Extended to the Access and Supply of Goods and Services*, Press Release No 15856/04, Brussels, December 13, 2004, available at http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/misc/83078.pdf or <http://europa.eu.int/rapid/pressReleasesAction.do?reference=pres/04/350&format=html>.

3.1 Gender Equality, the European Employment Strategy and the Lisbon Strategy

The European Employment Strategy was launched in 1997, following the introduction within the Amsterdam Treaty of a new title on employment. Essentially, the EES is designed to assure coordination of the Member States' employment policy priorities in line with the common priorities established at the EU level by the European Council. The agreement of the Member States to establish common objectives for employment and to coordinate their national employment policies is articulated around several important components. The Employment Guidelines are set up by the European Council and contain common recommendations in terms of employment policies to all Member States, as well as country-specific recommendations. The National Action Plans on Employment describe how the guidelines are put into practice at the national level. These documents are extremely important for observing to which extent gender equality remains on the employment agenda and to document the evolution of female employment, as well as the consistency of social policies in relation to gender equality. It is to be noted that until 2003, the Employment Guidelines were grouped under four pillars, namely: *employability*, *entrepreneurship*, *adaptability* and *equal opportunities for women and men*. As such, the matter of equal opportunities for women and men was specifically stated as a priority of the Employment Guidelines. Unfortunately, the 2003 Adopted Employment Guidelines,³¹ starting *inter alia* from the Lisbon target,³² established three new employment-related objectives: *full employment*, *improving quality and productivity at work*, and *strengthening social cohesion and inclusion*. These three objectives include a further ten specific guidelines on improving governance of employment policies. The sixth one of these is *gender equality*. Through such an employment policy accent move, gender equality unfortunately risks disappearing as a priority. On the occasion of the proposed changes, the European Women's Lobby³³ promptly reacted by stating: "The integration of a specific pillar of equal opportunities in the European Employment Strategy launched at the Luxemburg Summit in 1997 was a crucial step for achieving equality between women and men. To keep gender

³¹ Council Decision of 22 July 2003 on Guidelines for the Employment Policies of the Member States (2003/578/EC), *Official Journal* L 197 of 5.8.2003, pp. 0013–0021, available at http://europa.eu.int/eur-lex/pri/en/oj/dat/2003/l_197/l_19720030805en00130021.pdf.

³² The Lisbon European Council held on March 23 and 24, 2000 set a new strategic goal for the European Union to become the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and great social cohesion.

³³ For more on the European Women's Lobby, a coordinating body of national and European non-governmental women's organizations in the European Union, see the EWL website at <http://www.womenlobby.org/doclist.asp?SectionID=7>.

equality focus in the European Employment Strategy remains essential in order to promote women's employment and to achieve equality of women and men."³⁴ Furthermore, the European Women's Lobby highlighted one of the most important aspects in relation to the Member States actions in terms of keeping gender equality on the economic and social agenda: "The experience of the last five years in the implementation of the European Employment Strategy clearly demonstrates that if gender is not integrated in the EU guidelines there is no transposition and integration into the National Action Plans at Member States level." At the time of establishing the three new objectives of the employment guidelines, signals already appeared that the Lisbon targets to be met in 2010 are about to be missed. As such, the new employment guidelines were articulated as a 'speeding up' solution for a more competitive labor market. Therefore, it can be stated that the gender equality was given a different, (lower) priority within the employment strategy, in preference of more general solutions for accelerating the development of the employment market. Ultimately, such an approach is difficult to be understood, as increasing the female presence in the labor market is a solution activating a significant workforce on behalf of more than half of the European population.

In order to advance gender equality in the EU and to meet Lisbon targets for women, the implementation of the following measures are needed:

- reform of the wage bargaining system;
- promotion of affordable child care facilities in preference to greater child benefits;
- implementation of more flexible labor market regulations, especially as regards part-time employment;
- enhancement of the enforcement of equal treatment legislation; and
- implementation of market reforms, so as to enable the expansion of sectors in which female employment is concentrated.

3.2 Gender Mainstreaming within the European Union: A Political Process

As disequilibrium between women and men continues to mark daily life in the EU space and the countries still in accession, it became obvious that new approaches and strategies should be employed in order to reach gender equality. It is stated that the

³⁴ European Women's Lobby, *Employment Guidelines for 2003: Concrete Proposals on How to Strengthen Specific Gender Equality Focus and the Gender Equality Mainstreaming Approach* (Brussels: EWP, May 6, 2003), available at <http://www.womenlobby.org/Document.asp?DocID=589&tod=182743>.

issue of gender equality needs to be addressed at a more structural level, by involving a large number of social actors. Articles 2 and 3 of the Amsterdam Treaty retain equality between women and men as one of the main tasks of the Community, and retain the promotion of gender equality into all the activities set out by the Community as a transversal objective.³⁵ Therefore, it can be stated that gender mainstreaming has become a legal obligation for the Member States.

It is to be noted that the concept of gender mainstreaming was given a lower priority in the debate around gender equality within the EU space compared with the years following the 1995 Fourth World Conference on Women. It could be argued that gender mainstreaming did not lose its place in public discourse, but after the time of its conceptualization at the end of the 1990s it started to be put in practice. However, it should be mentioned that the European Commission 2004 Report on equality for women and men still underlines that there is a need “*to reinforce the implementation of gender mainstreaming* in all relevant policy fields, including in employment and social policies, education, research, external relations, development cooperation, budget and financial policies.”³⁶

Furthermore, in terms of the political dimension of gender mainstreaming, the Member States governments are to issue political statements indicating the commitment to mainstream gender equality into all policies and programs, and underlining the objective of achieving gender equality. Such commitment is to be complemented by clear criteria for gender mainstreaming aimed at helping the social actors to integrate it. In this picture, it is clear that “Effective gender mainstreaming cannot be achieved without:

- explicit political will and institutional commitment at the highest level to the gender mainstreaming strategy, including systematic efforts to implement it;
- full engagement with the gender mainstreaming process from leaders and managers within the services, including clear lines of accountability and responsibility;
- development of adequate institutional capacity and expertise to carry out gender mainstreaming strategies;
- adequate budgets that support the people as well as the programs; and

³⁵ See http://europa.eu.int/comm/employment_social/equ_opp/strategy/3_en.html.

³⁶ European Commission, *Report on Equality between Women and Men, 2004* (Brussels: EC Employment and Social Affairs DG, February 19, 2004), p. 10, available as COM(2004)115/final at http://europa.eu.int/comm/employment_social/equ_opp/com_04_115_en.pdf.

- ensuring the integration of a gender equality analysis and objectives in EU macro-economic policies and trade policies.”³⁷

Gender mainstreaming cannot replace equality policy strategies, but rather ought to complement them, by having the same goal of reaching gender equality. Especially in the context of enlarging the EU and of adopting the *Acquis Communautaire*, there is much space for political and institutional renewal in relation to gender mainstreaming. Current changes at the economic, political and institutional level, based on the request of adopting the legal obligations as generated by the Amsterdam Treaty in terms of gender mainstreaming, leave space open in the new Member States, as well as in the still accession countries, to really integrate this concept.

In terms of facilitating the process of integrating gender mainstreaming into the policies, the European Commission issued a practical guide³⁸ aimed to offer advice to the future member states on mainstreaming gender into the Joint Memoranda on Social Inclusion. The guide offers practical suggestions on mainstreaming gender in each step of the Memoranda. The Joint Memoranda on Social Inclusion for the ten countries joining the Union in 2004 were formally signed by the Commission and the national authorities on December 18, 2003. Work on the Joint Memoranda on Social Inclusion for Bulgaria and Romania is currently completed. Furthermore, the Joint Memoranda on Social Inclusion are laying down the ground for the National Action Plans on Social Inclusion, issued at every two years. Having as a starting point the practical guide issued by the Commission it can be stated that the topic of gender mainstreaming is incorporated only in very few of the Joint Memoranda on Social Inclusion (Estonia, Latvia and Cyprus).³⁹ Lithuania and the Czech Republic have integrated the gender dimension in a number of employment policies and programs. In Hungary, Poland and Slovak Republic it is appreciated that increased awareness on gender equality gave a political impulse to policies regarding women’s access to the labor market.

³⁷ European Women’s Lobby, *EWL Proposals for the New Social Policy Agenda, 2006–2010* (Brussels: EWL, October 28, 2004), available at <http://www.womenlobby.org/Document.asp?DocID=824&tod=152858>.

³⁸ European Commission, *Gender Mainstreaming in the Joint Inclusion Memoranda for Future Member States: Practical Guide* (Brussels: EC Employment and Social Affairs DG, 2003), available at http://europa.eu.int/comm/employment_social/equ_opp/gmprac_guide_en.pdf.

³⁹ European Commission, *Social Inclusion in the New Member States: A Synthesis of the Joint Memoranda on Social Inclusion*, a Commission Staff Working Paper (Brussels: European Commission, June 22, 2004), available as SEC(2004)848 at http://europa.eu.int/comm/employment_social/soc-prot/soc-incl/sec_04_848_en.pdf.

On the occasion of the European Commission's paper on synthesizing the Joint Memoranda on Social Inclusion,⁴⁰ several recommendations were made in order to further mainstream gender in the National Action Plans:

- create a policy context combining legal provisions, political will and the formulation of clear goals;
- build an awareness-raising capacity including training and expertise all along the process; and
- establish adequate institutional mechanisms, keeping in mind that the ultimate institutional mechanisms are new ways of working, planning and implementing policies.

The ten new Member States submitted their first 2004–2006 National Action Plans on Poverty and Social Inclusion in July 2004.⁴¹ The rather vague recommendations listed above did not, unfortunately, generate an adequate image on gender mainstreaming in terms of social inclusion. The only Member States that explicitly retain gender mainstreaming as a priority are Lithuania and the Czech Republic. The National Action Plan submitted by Lithuania also explicitly addresses proposed measures on ensuring the reconciliation of professional and family life.

A Joint Report by the Commission and the Council on social inclusion in the fifteen Member States was also issued in March 2004.⁴² The Report highlights the fact that the use of gender issues as a tool to serve anti-poverty policies is prevalent in most National Actions Plans submitted. There is a special note on the use of gender issues as means to achieve priority objectives such as fighting child poverty or family crises with the risk of neglecting gender equality. However, it is also stated that for most Member States, their National Action Plans do not mention the mechanisms used to integrate gender issues, which makes it difficult to assess the sustainability of their commitment in this regard. In terms of quantitative targets segregated by sex, very few Member States have engendered specific quantitative targets apart from the targets already set in the European Employment Strategy. Sweden specifies most of its targets in relation to men and women. Germany has gender targets for IT training and internet usage. Austria intends to close gender gaps related to the minimum pension. Greece has an

⁴⁰ Ibid.

⁴¹ European Commission, *National Action Plans on Social Inclusion* (Brussels: EC Employment and Social Affairs DG, 2001–2004), available at http://europa.eu.int/comm/employment_social/news/2001/jun/napsincl2001_en.html.

⁴² Council of the European Union, *Joint Report by the Commission and the Council on Social Inclusion* (Brussels: Council of the European Union, March 5, 2004), available at http://europa.eu.int/comm/employment_social/soc-prot/soc-incl/final_joint_inclusion_report_2003_en.pdf

indirect gender target with respect to childcare, and the UK quantified targets on single parents and teenage pregnancies.

As an overall assessment of the concrete ways of building gender mainstreaming as a strategy complementary to traditional equality policies, it is to be noted that in most of the twenty-five current EU Member States gender mainstreaming is weak outside of employment issues. This reveals a fragmentary intensification of gender mainstreaming and shows that much still needs to be done. Limiting the feminization of poverty, as well as improving women's access to vocational education and enhancing the child care system as a part of reconciling family and working life, would benefit from strong social measures. Also, it is relevant to observe that the efforts towards aligning with the EU social inclusion process on behalf of the new Member States is very complex and requires a lot to be done in a relatively short period of time. In such a context, gender mainstreaming appears to be somehow sacrificed in the new Member States in favour of other burning social policy aspects.

3.3 Mainstreaming Gender within the Structural Funds: A Financial Commitment to Gender Equality

The European regional policy is perceived as a solidarity policy, designed to reduce through its specific financial instruments the gaps in development among the regions and among the citizens. The principle of solidarity as the background of the regional policy is primarily expressed through the four Structural Funds.⁴³ Each Structural Fund has its own specific thematic area of interest. As the European Social Fund promotes the return of the unemployed and disadvantaged groups to the workforce market, mainly by supporting training measures and recruitment systems, it is to be underlined that it represents one of the most important financial instruments for getting financial support for gender equality. Through the European Social Fund objectives, the main dimensions of the European Employment Strategy are put into practice at the national level of the Member States, by modernizing the workforce skills and fostering the entrepreneurship initiatives. In this regard, as the employability level represents one of the main tasks of the European Structural Fund, and as the female employability is significantly lower than the male one throughout the EU, it can be concluded that a consistent gender mainstreaming of the European Social Fund represents a major catalyst for putting gender equality into practice.

The general approach of gender mainstreaming within the four structural funds is described in a Communication adopted by the Commission on December 12, 2002 on

⁴³ The European Regional Development Fund; the European Social Fund; the Financial Instrument for Fisheries Guidance; and the European Agricultural and Guarantee Fund.

the *Implementation of Gender Mainstreaming in the Structural Funds: Programming Documents for 2000–2006*.⁴⁴ As a very important step forward in terms of financial commitment to gender equality it has to be noted that if before December 2002 the Structural Funds only supported specific measures for women or pilot projects, after December 2002 gender equality was mainstreamed within Structural Funds. In other words, the gender equality dimension has been incorporated within the planning, implementation, monitoring and evaluation of the financed programs and projects throughout the process of managing the Structural Funds. However, the Structural Funds can only address the national EU Member States' set up policies. Furthermore, the impact of effective funding relies on the level of clear political and financial commitment of every Member State to gender mainstreaming and thus, to gender equality. As it appears not to be a specific political and financial commitment oriented towards gender mainstreaming within the National Action Plans for Employment and for Social Inclusion, by setting up clear priorities in terms of gender mainstreaming and in terms of financing indicators for measuring progress in the field, it might be expected that advancing gender equality will not benefit much from using the financial instruments provided by the Structural Funds.

The potential offered by mainstreaming gender in organizing, improving, developing and evaluating the policy process so that a gender equality approach is incorporated in all policies at all levels is huge. Gender mainstreaming represents a vital strategy as it connects women to the heart of the policy-making process and the policies are thus better constructed in terms of the real needs of women and men. Ultimately, gender mainstreaming leads to better governance and facilitates full use of human resources. Such results are in line with the economic and social goals of the EU established for this decade. However, undertaken without attention, gender mainstreaming is a strategy that can easily be weakened and transformed into tokenism where public commitment is given in principle, but where in practice very little is achieved.

4. WHAT HAS NOT YET BEEN ACHIEVED

Despite important progress and even if women in Europe obtained *de jure* equal rights and equal opportunities with men, new forms of inequality have developed. The structural changes that have been occurring in Europe for almost two decades as a consequence of globalization and increasing liberalization have been followed by

⁴⁴ European Commission, *Implementation of Gender Mainstreaming in the Structural Funds Programming Documents, 2000–2006* (Brussels: EC Employment and Social Affairs DG, December 20, 2002), available as COM(2002)748 final, at http://europa.eu.int/comm/employment_social/equ_opp/com02748_en.pdf.

aggregated social problems that generate unemployment, depreciation of human work, social exclusion and the pauperization of parts of societies. These aspects affect women and men differently and lead to the removal of gender equality as a priority in the social agenda in preference of more difficult policy areas.

4.1 Still No Equal Pay for Work of Equal Value

Despite the adoption of the 1975 European Directive on Equal Pay for Women and Men as Employees, many women today are still paid much less than men for identical work. The European Parliament has repeatedly criticized national governments for their application of the 1975 Directive and has pressed the European Commission to take more decisive action. In the *Community Framework Strategy on Gender Equality (2001–2005)*⁴⁵ adopted in 2000, the European Commission set up as an operational objective the need for reviewing and improving the 1975 Equal Pay Directive, particularly by looking at the functioning of legal remedies and reinforcing the role and powers of the labor inspectorate bodies with regard to equal pay legislation. Through the proposed simplification process and through the recast Directive on the implementation of the principle of equal opportunities and equal treatment of women and men in matters of employment and occupation, the 1975 Equal Pay Directive will be repealed. However, the legal change in the sense of reinforcing the powers of the state labor inspectorate does not appear to be part of the proposed recasting process.

The gender pay gap is still significant in the new Member States and, “as compared to men, women have a limited access to managerial positions in companies and to high-skilled jobs.”⁴⁶ Regarding the gender pay gap within the old Member States, it is indicated that many Member States “present a range of measures which would have a positive impact in reducing the gender pay gap, but more actions are piece-meal, especially in countries with the highest gaps.”⁴⁷ Many initiatives remain voluntary with a lack of evaluation of impact.⁴⁸ In relation to the gender pay gap, it can be stated that the legislation has still not achieved the impact needed to put the equal pay principle into practice. Establishing indicators for gender pay gap differentials would make it

⁴⁵ European Commission, *Towards a Community Framework Strategy on Gender Equality*, op. cit., p. 11.

⁴⁶ European Commission, *Social Inclusion in the New Member States*, op. cit.

⁴⁷ Germany, Portugal and Austria.

⁴⁸ Council of the European Union, *Joint Employment Report 2003–2004* (Brussels: Council of the European Union, March 5, 2004), pp. 8–9, available at http://europa.eu.int/comm/employment_social/employment_strategy/report_2003/jer2003_4_en.pdf.

possible to create instruments for monitoring in this area. In this regard, the gender pay gap should be made visible at the individual level, not only at the systemic level.

The tax system has different consequences for women's participation in the labor market. In the first instance, they reduce the women's incentive to work, as long as real wages are not attractive after taxation. In addition, taxes can stimulate the female labor participation by providing an infrastructure that would facilitate women's integration into the labor market. In this regard, if there are social measures designed to create and enhance an affordable and trustful child care system, the female employment level will increase. Such a measure is a very concrete and specific example of reconciling work and family life, with significant consequences for increasing the female employment rate, and then, through a more powerful work force, economic growth. In addition, such measures would make it easier to counteract the worrying falling birth rates throughout the European Union. The reality of the low birth rates is, *inter alia*, a sign that women do not believe they can combine motherhood and professional life, since they perceive this combination as not being financially beneficial.

In conclusion, "In law, if not always fully in fact, the EU legislation on the principle of equal pay between men and women has been implemented relatively successfully in the national legal systems" of all Member States and still Accession Countries. However, "despite efforts to provide better enforcement mechanisms in order to combat pay discrimination at national level [...], the gender pay gap has remained unchanged since the implementation of equal pay legislation."⁴⁹

4.2 Persistence of the Gender Employment Gap

According to the situation provided by the 2003/2004 Joint Employment Report issued by the Council of the European Union,⁵⁰ "in 2002, the employment rate of women in the EU 15 Member States increased slightly from 55 percent to 55.6 percent reducing the employment gender gap to 17.2 percent". For the new Member States, the gender gaps in employment are smaller (12 percent). "However, female employment rates fell or stagnated in most of the new Member States in recent years despite economic recovery."⁵¹

⁴⁹ European Commission, *Bulletin on Legal Issues in Gender Equality*, No 1/2004 (Bulletin of the Commission's network of legal experts on the application of Community law on equal treatment between women and men) (Brussels: EC Employment, Social Affairs and Equal Opportunities DG, September 2004), p. 7, available at http://europa.eu.int/comm/employment_social/equ_opp/newsletter/bulletin04_1_en.pdf.

⁵⁰ Council of the European Union, *Joint Employment Report 2003–2004*, op. cit., p. 44.

⁵¹ European Commission, *Social Inclusion in the New Member States*, op. cit., p. 14.

In March 2000 the European Council in Lisbon set out a ten year strategy aimed to make the EU the world's most dynamic and competitive economy. In this regard, the Lisbon Strategy is perceived as one of the main tools to bring economic and social impetus to the EU and the EES represents a key component of the Lisbon Strategy. In such a picture, women's role is critical, as they represent more than half of the EU population. Overall, the Lisbon strategy implies concentrated efforts both to improve labor market performance and to raise the productivity level, aspects subsumed to the reality of "more and better jobs." With a socially unacceptable high unemployment, raising employment is a policy priority not only for the old, but also for the new EU Member States. Therefore, one of the targets set up by the Lisbon strategy is given by an overall employment rate close to 70 percent and a female employment rate over 60 percent by 2010.

In relation to social cohesion, the Lisbon strategy generates a quite clear line, calling for the modernization of social protection system by stating that "The best safeguard against social exclusion is a job." Such a statement is applicable to women more than ever. It is true that the female employment rate has increased over the last decade as a result of increased female labor participation. However, the participation of young women in education or the labor force is barely below that of young men, while young women are better educated than their male counterparts. "Women – especially married women and those with children – are still less attached to the labor market on average than men."⁵²

The change in social norms regarding gender roles has had clearly positive consequences on female employment. In addition to reducing the gender roles lens, another critical aspect related to increasing women's employment is shown by the need to reconcile family and professional life. In most EU countries, women try to postpone their first child, planning motherhood in order to somehow reconcile family and professional life. Empirical evidence shows that enhancing the level of the affordability of the childcare system raise women's labor participation. However, female participation in the labor market benefits from concrete social measures aimed at a successful reconciliation of work and family life. The employment rate of married women is higher in those EU Member States providing affordable childcare facilities.

The gender wage gap reduction represents a determining factor for increasing female participation in the labor market and might have important consequences on reducing gender discrimination. Currently, gender segregation by industrial sectors and low

⁵² European Commission, *The EU Economy: 2004 Review* (Brussels: EC Economic and Financial Affairs DG, October 26, 2004), p. 134, available as ECFIN(2004)REP 50455-EN at http://europa.eu.int/comm/economy_finance/publications/european_economy/2004/ee604_fullreport_en.pdf.

wages in female dominated sectors explain the existence of the still present gender pay gaps. Although there is a well-developed legal framework on equal pay and equal employment opportunities within the EU, there is still a substantial lag-behind in enforcement, as indicated by the number of lawsuits and the level of public awareness on these aspects.

4.3 Lack of Treaty Provisions or Directives on Violence against Women and Trafficking in Women

There are no Treaty Provisions or Directives specifically addressing violence against women and trafficking in women within the EU, although both represent realities politically acknowledged by the EU as major social phenomena. The European Commission has indicated that “[t]he prevention of and fight against domestic violence fall mainly under local and national competences and Member States should follow up developments by using the set of indicators on violence agreed by the Council of Ministers.”⁵³ The seven indicators agreed by the Council of Ministers were put together in 2002 under the Danish Presidency, as follows:

1. profile of female victims of violence;
2. profile of male perpetrators;
3. victim support;
4. measures addressing the male perpetrator to end the circle of violence;
5. training of professionals;
6. state measures to eliminate violence against women; and
7. evaluation on progress made and lessons learned.⁵⁴

The Danish Presidency developed these indicators based on extensive research carried out by the previous Spanish EU Presidency and also proposed the following definition for domestic violence: “Any physical, sexual or psychological violence, inflicted on a victim by a current or former spouse or intimate partner or other members of the family.” It is to be noted though that while the Beijing Platform for Action addresses

⁵³ European Commission, *Report on Equality between Women and Men*, 2004, op. cit., p. 11.

⁵⁴ Council of the European Union, *Draft Council Conclusions on the Review of the Implementation by the Member States and the EU Institutions of the Beijing Platform for Action* (Brussels: Council of European Union, November 22, 2002), p. 4, available as 14578/02, SOC 546, JAI 267 at <http://register.consilium.eu.int/pdf/en/02/st14/14578en2.pdf>.

violence against women, the Danish Presidency only proposed a definition on 'domestic violence', and did not address all forms of gender-based violence.

Despite the fact that the European Commission has indicated that domestic violence remains under the national competence of Member States, European women's non-governmental organizations, including the European Women's Lobby, insist "that the EU deliver a proposal for a legal framework on violence against women with the aim of developing EU-wide binding policies and integrated strategies to tackle all forms of violence against women."⁵⁵

The introduction in the draft European Constitutional Treaty of a Declaration on Combating All Kinds of Domestic Violence represented a very important step forward in terms of recognizing domestic violence within the EU. However, this Declaration "will have no legal status but represents a moral obligation and political will. The scope of the Declaration is limited in that it only refers to domestic violence. It would have been stronger if it referred to all forms of violence against women."⁵⁶ The Declaration is important because it could be perceived as another political step by the EU in coordinating efforts within the Member States in preventing and combating violence against women. In this regard, in terms of policies and programs, it is important to note that the new Daphne II Multi-Annual Program (May 2004–December 2008)⁵⁷ benefits from an increased budget of 50 Million Euros for supporting actions to prevent and combat violence against women in the Member States,⁵⁸ together with another two sets of beneficiaries, namely children and young people.⁵⁹ The Daphne II Program is a part of the series of programs designed to put cooperation in practice in the EU in the field of justice and home affairs and is offered as an EU funding

⁵⁵ European Women's Lobby, *Response to the European Commission Green Paper* (Brussels: EWL, September 9 2004), available at <http://www.womenlobby.org/Document.asp?DocID=785&tod=123057>.

⁵⁶ European Women's Lobby, *Beijing+10. 1995–2005: Review of the Implementation of the Beijing Platform for Action by the European Union* (Brussels: EWL, November 2004), available at <http://www.womenlobby.org/PDF/beijing-en.pdf>.

⁵⁷ Decision 803/2004/EC of the European Parliament and of the Council of 21 April 2004 adopting a Program of Community Action (2004 to 2008) to Prevent and Combat Violence against Children, Young People and Women and to Protect Victims and Groups at Risk (the Daphne II Program), *Official Journal* L 143 of 30.4.2004, pp. 0001–0008, available at http://europa.eu.int/eur-lex/pri/en/oj/dat/2004/l_143/l_14320040430en00010008.pdf.

⁵⁸ European Commission, *Report on Equality between Women and Men*, 2004, op. cit., p. 11.

⁵⁹ For more on the Daphne II Program, see http://europa.eu.int/comm/justice_home/funding/daphne/funding_daphne_en.htm.

opportunity to national authorities, professionals, academics, non-governmental organizations, etc.

In relation to trafficking in women, a Joint Action⁶⁰ was adopted by the Council in 1997 concerning action to combat trafficking in human beings and sexual exploitation of children. The language of the document is powerful in terms of the imperative measures needed to be taken by the Member States, in order to establish common rules for action to combat trafficking in human beings and sexual exploitation of children, and to improve judicial cooperation in criminal matters.

In this regard, Member States must undertake a review of the relevant national legislation and associated practice, in compliance with their constitutional rules, in order to ensure the following:

- Trafficking and sexual exploitation, as defined by the document, are classified as criminal offences.
- These offences are punishable by effective, proportionate and dissuasive criminal penalties.
- Appropriate protection for witnesses who provide information is assured, as well as protection for the victims and their families.
- Immigration, social security and tax authorities give special attention to the problems connected with trafficking in human beings and sexual exploitation of children.

In order to approximate the laws and regulations of the Member States in the area of police and judicial cooperation in criminal matters in relation to trafficking in human beings, the Council adopted a Framework Decision on 2002.⁶¹ The Framework Decision introduces the concept of ‘criminal and civil liability of legal persons’ in parallel with that of natural persons for offences of trafficking in human beings. The Decision’s objective is also to cover offences concerning trafficking in human beings not only for the purpose of sexual exploitation, but also for the purpose of labor exploitation.

In addition to the policy efforts oriented at the EU level for preventing and combating trafficking in women, it should be noted that an Experts Group on Trafficking in

⁶⁰ The Joint Action was amended by Council Outline Decision 2002/629/JHA of 19 July 2002 concerning trafficking in human beings.

⁶¹ Council Framework Decision 2002/629/JHA of 19 July 2002 on Combating Trafficking in Human Beings, *Official Journal* L 203 of 01.08.2002, pp. 0001–0004, available at http://europa.eu.int/eur-lex/pri/en/oj/dat/2002/l_203/l_20320020801en00010004.pdf.

Human Beings was established in 2003.⁶² The aim of establishing the Group was to provide the European Commission with expertise contained in reports or opinions relating to the prevention of and fight against trafficking in human beings.

Without doubt, the EU steps to address violence against women and trafficking in women within the Member States are representative and important. However, the magnitude of social realities such as violence against women and trafficking in women represents extremely complex issues to be addressed. While considering the steps that have already been taken in these fields as very positive signals of recognizing and addressing the problems at the EU level, civil society actors across Europe, including women's non-governmental organizations, demand more articulated and legally binding instruments to be set up in order to adequately respond to the consequences of violence against women in all its forms.⁶³

4.4 Women in Decision-Making: An Unresolved Aspect of Gender Equality

There is no legally binding provision on gender equality in relation to decision-making, including political decision-making, at the EU level. However, it is important to note that Directive 2002/73/EC stipulates that "Member States may maintain or adopt measures within the meaning of Article 141(4) of the Treaty with a view to ensuring full equality in practice between men and women."⁶⁴ In this regard, at the level of legal interpretation, there is space for concluding that positive actions in relation to gender equality in decision-making are also to be promoted.

In terms of their presence in the political decision-making arena, women are still significantly under-represented both in political structures in the Member States and in EU institutions. This reality represents a fundamental deficit of EU democracy.⁶⁵ In relation to promoting the balanced participation of women and men in decision-making, the Commission⁶⁶ urges Member States to ensure the implementation of the

⁶² Commission Decision 2003/209/EC of 25 March 2003 Setting Up a Consultative Group to Be Known as the 'Expert Group on Trafficking in Human Beings', *Official journal* L 79 of 26.03.2003, pp. 0025–0027, available at http://europa.eu.int/eur-lex/pri/en/oj/dat/2003/l_079/l_07920030326en00250027.pdf.

⁶³ European Women's Lobby, *Beijing+10*, op. cit., pp. 45–47.

⁶⁴ Directive 2002/73/EC, Article 1(2) (adding Article 2(8) to the amended Directive 76/207/EEC).

⁶⁵ European Commission, *Report on Equality between Women and Men*, 2004, op. cit. p. 9.

⁶⁶ *Ibid.*

Council Recommendation 96/694/EC on the Balanced Participation of Women and Men in the Decision-Making Process,⁶⁷ in particular by:

- using “the sets of indicators agreed by the Council of Ministers for the follow up of the Beijing Platform for Action on women and men in political, as well as economic decision-making”; and
- increasing “women’s participation not only in the representative bodies, but also around the negotiation table.”

The Council Recommendation 96/694/EC was followed in March 2000 by an evaluation Report issued by the Commission.⁶⁸ The Report notes that the impact of the 1996 Council Recommendation has to be assessed in connection with the Beijing Platform for Action. “Both had an impact on Member States policies but failed to achieve the result of a gender balance in decision-making.”⁶⁹ Furthermore, the Report highlights that “The question is no longer as to why women should be in decision-making positions, but how to achieve this goal.”

The March 2000 Commission Report on evaluating the impact of the 1996 Council Recommendation was followed by a Report issued by the Committee on Women’s Rights and Equal Opportunities of the European Parliament in December 2000. This European Parliament Report has a special significance as it brings a new view on the topic by integrating a chapter dedicated to the advantages of women’s participation in decision-making, as they were elaborated by the European Network “Women in Decision-Making.”⁷⁰ These advantages include the aspects of democracy reinforcement, rejuvenation of political culture, and enrichment of political culture with different interests and value systems.

⁶⁷ Council Recommendation 96/694/EC of 2 December 1996 on the Balanced Participation of Women and Men in the Decision-Making Process, *Official Journal* L 319 of 10.12.1996, pp. 0011–0015, available at http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=en&numdoc=31996H0694.

⁶⁸ European Commission, *Report on the Implementation of Council Recommendation 96/694 of 2 December 1996 on the Balanced Participation of Women and Men in the Decision-Making Process* (Brussels: European Commission, March 7, 2000), available as COM(2000)120/final at http://europa.eu.int/eur-lex/en/com/rpt/2000/com2000_0120en01.pdf.

⁶⁹ *Ibid.*, p. 21.

⁷⁰ European Parliament, *Report on the Commission Report on the Implementation of Council Recommendation 96/694 of 2 December 1996 on the Balanced Participation of Women and Men in the Decision-Making Process* (Strasbourg: EP Committee on Women’s Rights and Equal Opportunities, December 4, 2000), p. 16, available as A5-0373/2000 at <http://www2.europarl.eu.int/omk/OM-Europarl?prog=report&l=en&pubref=-//ep//nongml+report+a5-2000-0373+0+doc+pdf+v0//en&level=2>.

As equality for women and men is essential to democracy and represents a fundamental principle of Community law, and as long as the balanced participation of women and men in the decision-making process is a key element in achieving real equality between women and men, European women's non-governmental organizations call on the European Union to take into consideration proposals for a Directive to cover new gender equality areas, such as gender equality in decision-making. Reforms within the electoral rules in the Member States should also be carried out in parallel, as well as the introduction of parity democracy and the principle of alternation on the electoral lists for future European elections.⁷¹

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⁷¹ European Women's Lobby, *Beijing+10*, op. cit., pp. 63–64.

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Overview

The EU integration process has clearly been a catalyst for improvements in the legislative framework on gender equality in the new Member States and Candidate Countries. However, these 2004 monitoring reports reveal that this legal change has not been translated into a meaningful impact on the daily lives of men and women. In particular, the reports highlight the following:

- The level of *implementation of legislative measures* remains very low. As a result, the seriousness of gender equality policies at the national level is put into question;
- While the commitment to *gender mainstreaming* is repeatedly affirmed at the EU level, articulated policies were not carried out in the Member States examined. Consequently, it is very difficult to assess to what extent gender mainstreaming strategies have been successfully implemented at the national level in the absence of on-going gender impact assessments;
- *Women's employment rate* has registered a slight improvement in the new Member States and Candidate Countries examined in this report since 2002;
- *The gender pay gap* remains very high, with no indication of policies in place to address this;
- Women remain significantly under-represented in *decision-making positions*, particularly in political decision-making and parliamentary representation;
- The lack of clear political commitments and consistent policy-oriented strategies in the field of *violence against women* and *trafficking in women* persist.

Legislative overview: updates since 2002

The *Acquis Communautaire* has essentially been satisfactorily transposed in all the countries assessed and most national laws relating to equal treatment between men and women have undergone significant change. For example:

- In **Hungary**, the Act on equal treatment and the promotion of equal opportunities entered into force in 2004;
- The 1999 Law on Equal Opportunities for Women and Men in **Lithuania** was amended several times between 2002 and 2004;
- **Estonia** adopted a Gender Equality Law in 2004;
- In 2004, **Romania** amended the 2002 Act on Equal Opportunities.

In some cases, the legislative model of regulating sex-based discrimination unfortunately mixes up the establishment of a general anti-discrimination legislation with a specific legal framework on equal opportunities for women and men, as in the case of **Romania**. The problem arising from such a model is that of a difficult and heavy legal process available to potential victims of sex-based discrimination cases who might find themselves trapped within the confusing tasks of the national bodies set up based on two different legal frameworks.

Labor law reform

Important legal changes have also been made to the labor codes in the countries examined.

- In the last two years, two groups of amendments were integrated into the Labor Code of **Bulgaria**.
- The 2003 Labor Code in **Romania** also integrated important legal norms in relation to sex based discrimination within the labor market.
- In the **Czech Republic**, the labor law has been enriched since 2002 by many provisions concerning equal treatment for women and men.
- In **Poland**, however, the 2003 amendments to the labor law concerning the social security system did not include aspects important from the perspective of equal treatment for women and men in employment. Therefore, the risk of lowering the standards of protection against sex-based discrimination persists.
- A new Labor law was adopted by the Parliament in **Turkey** on 22 May 2003, introducing regulations on the principles of employment for pregnant and breastfeeding workers.

The *principle of equal pay between women and men* has been well integrated throughout the national legal frameworks of the new Member States and Candidate Countries. However, even if there has been progress in assuring the better enforcement of mechanisms designed to combat pay discrimination, the gender pay gap remains almost unmodified compared with 2002.

- In some countries such as **Poland** and **Romania**, there is still no general job classification system. Therefore, it is still problematic in these countries to assess to what extent there is a *de facto* equal pay framework at the national level.
- On the other hand, the 2004 Law on the protection against discrimination in **Bulgaria** explicitly proclaimed the principle of equal pay and set out the obligation of the employers to ensure equal remuneration for the same work or for the work of equal value. It is important to note that the principle of equal

pay in Bulgaria applies not only to labor remuneration, but to all payments and compensations concerning the labor relations.

In addition to the widespread existence of the gender pay gap, the lack of gender disaggregated statistics in the field of employment and the marked gender segregation of the labor market reveal the practical limitations of mechanisms designed to ensure the transposition of the principle of equal pay between women and men. In terms of case law, the lack of relevant cases brought to the national courts on equal pay should be noted, in contrast with the reality of relevant case law at the level of the European Court of Justice.

In most of the new Member States and Candidate Countries, the national legislation includes legal provisions on the prohibition of *direct and indirect discrimination*. The legal changes in this regard were also occasioned in the new Member States and Candidate Countries by the necessity of transposing the Directive 2002/73/EC¹ into the national legislations.

- Since 2002, ‘indirect discrimination based on sex’ has been prohibited in **Lithuania**, where a definition of the concept was also introduced into the national legal framework.
- **Hungary** integrated the concepts of ‘direct’ and ‘indirect’ discrimination in greater detail in the national legal framework through the 2003 Act on equal treatment and the promotion of equal opportunities.
- Through the 2004 Law on the protection against discrimination, **Bulgaria** brought its national legislation in line with the EU standards concerning direct and indirect discrimination.

As part of the transposition of the *Acquis Communautaire*, the *principle of shifting the burden of proof in sex based discrimination cases* had to be adequately introduced within the national legal frameworks of the future Member States.

- The 2004 Act on Gender Equality introduced the principle of shifting the burden of proof into the **Estonian** national legal framework;
- **Romania, Bulgaria and the Czech Republic** also transposed the principle of shifting the burden of proof in sex based discrimination cases into their national legal frameworks;

¹ Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC 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 *Official Journal L 269*, 05/10/2002 P. 0015 – 0020 http://europa.eu.int/eur-lex/pri/en/oj/dat/2002/l_269/l_26920021005en00150020.pdf.

- In **Hungary** the principle of shifting the burden of proof is contained into the national legislation, but comparing to the EU standards the injured party has to prove that he/she suffered a disadvantage;
- In **Poland** the regulations in the field are assessed as even stronger than the minimum requirements set out at the EU level;
- **Lithuania** amended in 2004 the Law on Equal Opportunities for Women and Men by introducing the concept of shifting the burden of proof.

Institutional Mechanisms on Gender Equality

The legal provisions of Directive 2002/73/EC stipulate for setting independent body or bodies at the national level that contribute to the “*promotion, analysis, monitoring and support of the equal treatment of all persons without discrimination on the grounds of sex.*”² The Directive also establishes the minimum requirements for the independent body or bodies designed to promote the principle of equal treatment as focusing on: pursuing claims on behalf of the victims of discrimination through an administrative or judicial procedure, conducting independent surveys concerning discrimination, publishing independent reports and making recommendations on any issues relating discrimination. The national institutions dealing with gender equality in the new Member States and Candidate Countries are placed at the governmental and legislative level. There is one notable exception, namely **Bulgaria**, where there is no specific national body dealing with gender equality at the governmental or parliamentary level.

A general assessment of the national institutions in charge with gender equality within the new Member States and Candidate Countries indicates that these structures do not have *the level of independence and decision-making*, nor the necessary infrastructure and financial capacity to give a fresh impetus to transposing gender equality standards into practice.

However, an important exception is represented by the Equal Opportunities Ombudsperson in **Lithuania**, which is assessed as being an independent and strong institution with appropriate authority. In **Poland**, although there is an institutional mechanism on gender equality represented by the Governmental Plenipotentiary for Equal Status of Women and Men, the Plenipotentiary does not have any power to make decisions.

- Through the 2004 Gender Equality Act a Gender Equality Ombudsperson appointed by the Minister of Social Affairs was set up in **Estonia**. A Department of Gender Equality is also set up within the Ministry of Social Affairs.

² Directive 2002/73/EC, Article 1.7 (8a).

- In **Slovakia**, the Department on Equality and Anti-Discrimination functions as a section of the Ministry of Employment, Social Affairs and Family. The Department has however no competence to take binding decisions and all decisions are made by the highest levels of the Ministry of Employment, Social Affairs and Family.
- In 2001 a Governmental Council for Equal Opportunities for Women and Men was set up in the **Czech Republic** as a permanent advisory body of the Government in the area of equal opportunities for women and men, and as such can only make recommendations in the mentioned field. The Secretariat of the Governmental Council is assured by the Unit for Equality between Men and Women that has been established as the lowest organizational unit of the Ministry of Labor and Social Affairs.
- In **Turkey**, the Law on the Directorate General on the Status of Women established at the Governmental level was approved by the Parliament on 27 October 2004.

At the parliamentary level, most the new Member States and Candidate Countries have established mechanisms dealing with equal treatment for women and men and equal opportunities. Exceptions are represented by **Bulgaria**, where there is no national institutional mechanism for gender equality, and **Poland**, where the monitoring notes only the institutional mechanisms on gender equality created at the governmental level.

In relation to the minimum requirements provided for by Directive 2002/73/EC, only very few of the national institutions responsible for gender equality within the Member States and Candidate Countries *pursue claims on behalf of the victims of discrimination through administrative and judicial procedures.*

- In **Lithuania**, the Ombudsperson investigates individual complaints on gender discrimination and sexual harassment.
- The National Agency for Equal Opportunities between Women and Men in **Romania** may receive notifications and complaints on behalf of the persons who consider themselves discriminated against in sex based discrimination situations. However, the National Agency will only carry out a consultative notification to assess the opportunity of sanctioning the discriminatory act referred. Furthermore, the National Agency shall submit the consultative notification to the National Council for Combating Discrimination that has the right to apply a sanction.

The monitoring reports highlighted the following problems with the existence and functioning of the national mechanisms on gender equality placed at the governmental level:

- There is a lack of financial means to support the transposition and practical implementation of the gender equality mandate of these institutions. Therefore, even if the mandate and specific tasks are well defined at the normative level, their concrete capacities in fulfilling these tasks lag behind *de facto*;
- Most of the national bodies in charge of gender equality do not meet the minimum standards established through the legal provisions of Directive 2002/73/EEC, especially in terms of pursuing claims on behalf of the victims of discrimination through administrative and judicial procedures;
- With the notable exception of **Lithuania**, the level of independence and decision-making of the national institutions in charge with gender equality is very low, or even nonexistent;
- The lack of trained staff and their national representation represent common problems.

Policies and programs on gender equality

In relation to the *national strategies on gender equality and equal opportunities for women and men*, it has to be observed that in several cases there is no articulated strategy in this field. For example, **Hungary, Slovakia, Poland and Bulgaria** have no comprehensive gender equality strategy. In **Bulgaria**, the 2004–2010 Employment Strategy and the 2004 National Action Plan for Employment provide for equal opportunities and equal treatment for women and men, by enforcing the gender mainstreaming principles.

In other countries, there are specific national plans on equal opportunities for women and men.

- In the **Czech Republic**, the national gender equality strategy is represented by a document entitled ‘Priorities and Procedures of the Czech Government in Promoting the Equality of Men and Women,’ divided into seven areas. A lack of clarity in this document means that many key aspects of gender equality are left out;
- In **Lithuania**, a National Program of Equal Opportunities for Women and Men was approved in June 2003.

Gender mainstreaming appears not to have been given much attention within the national strategies aimed at advancing gender equality in the new Member States and Candidate Countries. In this way, a gender mainstreaming strategy has not been valued as an effective tool for monitoring and improving women’s status.

- The **Romanian** National Plan of Equal Opportunities for Women and Men is one of the very few governmental documents that uses the concept of gender mainstreaming; however, there is only a simple reference to the concept;
- In the **Czech Republic** a 2001 Governmental Resolution includes the application of the gender mainstreaming among the Governmental tasks. Unfortunately, some ministries see gender mainstreaming as a part of the human resources agenda only and consider the task fulfilled when non-discriminatory conditions for employment of women and men are ensured;
- In **Poland** there is no comprehensive gender mainstreaming strategy;
- For **Hungary** there is no strategic policy document introducing gender mainstreaming. However, the concept is mentioned in the 2003 Report of the Governmental Office for Equal Opportunities and in the National Development Plan preparing the national policy machinery for spending structural funds, although no specific tools and instruments for implementation are mentioned. In the 2004 Report of the same Governmental Office, the requirement of gender mainstreaming is emphasized as being a vital strategy to be used towards the achievement of gender equality.

The monitoring reports reveal that in general there are no specific policies and programs dedicated to the *gender pay gap*. There are only two exceptions:

- In **Lithuania**, research on the causes and factors that generate wage differentials was commissioned by the Ministry of Social Protection and Labor in 2004. Based on the research conclusions, the Ministry is preparing recommendations to all social partners on the assessment of jobs when setting remunerations;
- In **Poland**, the gender pay gap is considered inevitable and with the exception of the amendments to the labor law no coordinated efforts have been undertaken in order to ensure equal pay for women and men.

In terms of *awareness raising campaigns* conducted at the governmental level, few gender equality initiatives are to be found.

- In the **Czech Republic**, the national strategy on gender equality provides that the Government shall emphasize the principle of equality of women and men and constantly inform about measures designed to support it in connection with the competence of each ministry. However, most ministries consider this task fulfilled when any text appears on their website in relation to gender equality. An awareness campaign was conducted in 2003 on domestic violence, but no specific campaigns were undertaken in the field of gender equality;
- In **Poland** and **Romania** most of the campaigns on gender discrimination are initiated and developed by non-governmental organizations and informal groups;

- In **Lithuania**, a 2002 non-governmental initiative has led to the creation of a portal on gender equality;
- In **Slovakia**, public access to gender equality information is declared as rather low and complicated. No public campaigns on gender equality or the prohibition of sex-based discrimination were initiated by the government. All campaigns aimed at raising awareness on the gender pay gap, work and family life reconciliation or sexual harassment were organized by non-governmental organizations with no state support.
- In **Hungary** the website of the Equal Opportunities Office has no specific section on gender equality and there are no campaigns promoting the adopted legal norms on gender equality.

Research and statistics in the field of gender equality

- In **Poland**, women earn 83 percent of men's salary. The gender pay gap is also visible within the group of women parliamentarians;
- The Statistical Office in **Slovakia** has issued several researches on demographic statistics and statistics on employment, unemployment and the pay gap structure. However, the monitoring report indicates that there is a significant number of areas where gender disaggregated statistics are missing;
- Research in **Estonia** shows that as of September 2004 the parental benefit was paid in 98.3 percent of the cases to the mother. According to the same research, women spend twice as much time doing housework than men, while men have longer working days at their paid job;
- No gender disaggregated data is currently available in **Bulgaria**. No data is available on the specific needs of working parents, gender dimension of health and safety in the workplace, or on family patterns.

Recommendations to national governments

Following a comparative analysis of the monitoring reports issued as part of the "Bringing the EU Home" project, the following recommendations are made to governments of the new Member States and Candidate Countries with a view to improving and implementing in practice the comprehensive EU legal framework on gender equality:

1. Implementation of the legislative measures on gender equality
 - Following the minimum standards provided for in the relevant EU Directives, independent bodies designed to promote, analyze, monitor and support the equal treatment for women and men without discrimination on the grounds of sex must be established at the national level. These bodies must be guaranteed the necessary level of independence and autonomy as well as the necessary financial and human resources;
 - National strategies on gender equality must be adopted and monitoring mechanisms that would annually assess the fulfillment of the objectives prescribed by the national strategies on gender equality must be established.
2. Gender mainstreaming
 - As an essential element of good governance and a long-term strategy aimed at redressing existing inequalities between women and men, gender mainstreaming policies must be adopted as a governmental policy;
 - Gender responsive budgeting must be agreed and adopted at the national level as a tool for determining the effect of government revenue and expenditure policies on women and men.
3. Equal treatment for women and men in employment
 - The legal provisions on equal treatment for women and men in employment must be enforced by adopting monitoring mechanisms at the national level designed to assess the extent to which the employers' obligations in this regard are met;
 - Concrete and specific strategies dedicated to the *de facto* reconciliation of family and professional life must be put in place. National governments should identify and commit appropriate financial resources towards developing policy-oriented actions aimed at creating affordable child care facilities in preference of higher child benefits. Through such concrete financial measures, the targets for childcare provisions agreed at the Barcelona Council in 2002, designed to provide by 2010 childcare to at least 90% of children between the ages of three and mandatory school age, and to at least 33% of children less than three years age must be met.
 - Instead of cuts in public services where women are concentrated, there should be market reforms enabling the expansion of sectors where female employment is predominant.

4. Equal pay

- As long as gender segregation by activity sector and relatively low wages in female-dominated sectors represent two of the main causes of the gender pay gap, it is urgently required that national governments develop policy actions sustained by adequate financial means in order to meet the obligations derived from the equal pay legal framework;
- In order to ensure that the equal pay principle is implemented in practice, employers' must be required through the National Employment Action Plans to analyze the pay system and wages from the perspective of gender equality, in cooperation with the trade union or other staff representatives, and to draw up actions plans based on the results;
- National mechanisms aimed at regularly monitoring the implementation of the equal pay principle must be put in place, based on assessing the tasks given to employers and various public institutions charged with the implementation of the equal pay principle through the existing national legal framework.

5. Women's representation in decision-making positions

- National governments must adopt specific and concrete legal measures in order to guarantee the full participation of women in decision-making by identifying and removing existing obstacles at the national level in relation to women's participation in economic, social and political decision-making processes;
- National governments must secure the financial means necessary to develop quantitative and qualitative studies on the participation of women and men in the decision-making process, with a focus on the advantages for democracy of a better balance between women and men in the decision-making process.

6. Violence against women

- National governments must adopt national plans of action addressing violence against women, containing specific and concrete requirements on: the concrete tasks assigned to various public institutions with relevant activity in the field of violence against women, the monitoring system for fulfilling these tasks, and an indication of the financial commitment needed to sustain national plans of action in the field;
- Both at the EU level and at the national governments' level, financial resources must be secured in order to systematically collect data on violence against women and initiate policy oriented actions based on the information gathered;

- The national governments must establish violence against women as a priority and financially support public campaigns on this issue.

Recommendations to the European Commission and other EU institutions

The following policy recommendations are made to EU institutions, in particular the European Commission:

- The European Commission should put forward proposals to the Council of Ministers to adopt legally binding instruments to address gender equality in decision-making;
- The European Commission should put forward proposals to the Council of Ministers to adopt legally binding instruments addressing all forms of violence against women;
- The European Commission should take the lead in systematically collecting data on violence against women and developing corresponding policy-oriented action to be followed both at EU and national levels.
- The European Commission should strengthen its role in monitoring the transposition and implementation of legislation in the new Member States and Candidate Countries. In parallel, the European Parliament should also have a monitoring role of national governments and the European Commission;
- The annual report on equality between women and men of the European Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions should be connected with the national reports of the Member States, articulated in the same structure as the Commission's Report. Special emphasis should be given to the national reports on increasing the availability of child-care facilities. Member States should include specific information about the necessary financial resources for increasing the provision of child-care facilities;
- The European Council should transmit a clear and explicit political message that Member States need to strengthen national mechanisms for gender equality.

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Executive Summary for Bulgaria

Introduction

Since 2002 a number of important changes have been made to Bulgarian legislation and new pieces of legislation have been adopted with a view to further transpose the *Acquis Communautaire* in the field of equal treatment for women and men.

Significant progress on gender equality legislation has been made through amendments and new provisions to already existing laws, such as *inter alia* the Labor Code, and the Social Insurance Code. However, the most substantial progress and step forward was made through the adoption of a new act, the Law on Protection against Discrimination (hereinafter “LPD”), promulgated in State Gazette No 86/30.09.2003, which entered into force on 1 January 2004.

The adoption of an anti-discrimination law and the establishment of a specific body for its implementation were among the recommendations made by the Commission against Racism and Intolerance to the Council of Europe. The adoption of the LPD was an important condition for closing Chapter 13 on “Social policy and employment” in the negotiations for Bulgaria’s EU membership. The LPD provides the main legal framework in the field of anti-discrimination applicable to all forms of discrimination in all spheres of social life. It regulates the bodies, procedures and mechanisms for protection against discrimination and provides measures to discontinue any infringement and punish any violation of the anti-discrimination law. It can be stated that the LPD is the first step towards the creation and provision of legal guarantees for equal treatment of women and men. However, the authorities and mechanisms for protection against discrimination, which according to the LPD should have been set up by the end of March 2004, have not yet begun their work.

Trafficking in human beings has been a criminal offence under the Bulgarian Penal Code since 2002. The Law on Countering Trafficking in Human Beings was adopted and entered into force on 1 January 2004. The law regulates the powers of authorities involved in combating trafficking in human beings and the status of the shelters, centers and commissions for protection and support of victims of human trafficking. The law introduces measures for prevention from trafficking, as well as measures for protection and assistance for victims of trafficking.

On 30 June 2004, the Bill on Protection against Domestic Violence was adopted at the first reading by the National Assembly. It legally defines the term ‘domestic violence’ and envisages the regulation of issues related to domestic violence, as well as measures

for protection. The bill aims to institutionalize protection and rehabilitation, and make these easily accessible and affordable.

The institution of the Ombudsman was introduced in Bulgarian legislation with the Law on the Ombudsman, which was adopted in 2003 and entered into force on 1 January 2004. The Ombudsman's vocation and duty is to intervene by means envisaged by law to protect citizens' rights and freedoms that are violated by acts or omissions by state and municipal authorities, administrations or by a person assigned with the provision of public services.

Institutional mechanisms

At present, there is no separate Committee within the National Assembly specifically assigned to work on gender equality issues. Such functions are attributed to the standing Human Rights and Religious Affairs Committee, which considers bills on anti-discrimination and equal treatment issues.

There is no specialized body or authority established with the Council of Ministers to deal with gender equality issues.

In order to comply with EU Directives related to equal opportunities for women and men, the Council of Ministers adopted Decree 155/31.07.2000, through which the Rules of Procedure of the Ministry of Labor and Social Policy were amended. Following the changes, the Minister of Labor and Social Policy became responsible to work out, organize, coordinate and control the execution of state policy in the area of achieving equal opportunities for women and men. The Minister is also authorized to make proposals to amend existing legal acts and adopt new ones, as well as to propose, arrange and coordinate with other state authorities' programmes and projects in the field of equal opportunities. This has been the first step to face and introduce gender issues and problems, and to institutionalize them. In March 2004, a sector on Equal Opportunities for Women and Men was established at the Ministry of Labor and Social Policy. It is to act as the Equality Body of the executive power, responsible for monitoring state policy in the field of gender equality.

In February 2003, a Consultative Commission on Equal Opportunities was set up at the Ministry of Labor and Social Policy. The Commission consists of representatives of the state authorities responsible for the elaboration and implementation of gender equality policy, social partners and NGOs. It is chaired by the Minister of Labor and Social Policy; the Deputy Chair is a representative of non-governmental organizations, working on women's issues. Its aim is to improve coordination in the process of gender and social equalization in Bulgaria and reinforce the administrative capacity of State's institutions and organizations responsible for equality policy.

The Commission for Protection against Discrimination is regulated by Chapter III of the LPD. It is an independent specialized state body for the prevention of discrimination, protection against discrimination and ensuring of equal opportunities. The Commission exerts control over the implementation and compliance of LPD and other laws regulating equal treatment.

NGOs play a tremendous role in addressing gender equality issues and continue to act as a major engine in the process of bringing closer the concepts of equality for women and men, awareness raising, implementing the principle of equality, changing patterns and stereotypes, and promoting measures to eliminate discrimination.

Policies, programs and awareness raising

The Employment Strategy 2004–2010, approved by the Council of Ministers on 6 November 2003, pays special attention to the need to develop policies on equal opportunities for all social groups to the labor market and to make these freely and easily accessible. The achievement of equality is to be pursued through two basic forms of actions:

- General measures refer to the establishment of legislative, institutional and a resource base for guaranteeing equal opportunities for women and men;
- Specific measures refer to social groups that are considered to be disadvantaged and in an unequal position in the labor market as compared with other persons.

The National Action Plan for Employment for 2004 outlines two basic aims to be achieved: an increase in the levels and quality of employment on one hand, and an increase of the employability and integration of disadvantaged groups in the labor market on the other. The 2004 Plan includes actions that are part of the activities of the Employment Strategy, which are presented in specific directions to develop the labor market, including the “Development of a policy for equal opportunities and a labor market that is free and accessible to all social groups.”

The Plan aims to increase the rate of employment for women and improve the quality of employment, as well as to promote women’s economic activity in order to overcome the employment gap between women and men.

In the field of education, gender studies are offered by few universities in Bulgaria in their Master’s and Doctoral Programmes.

Provisions in the LPD and in the Strategy for Modernization of the State Administration regulate the policies (1) in education: to eliminate sex-stereotypes in schools textbooks and teaching; (2) in public administration: to remove obstacles faced by women trying to reach higher and managerial positions and to increase women’s participation in representative bodies. However, no concrete measures for their

implementation have yet been undertaken. No data is available concerning the resources allocated to support mechanisms for the promotion of equality between women and men, or to indicate to what extent and with what impact gender equality policies are included in the abovementioned objective areas.

Research and statistics

Limited gender disaggregated data is presently available in Bulgaria. The National Statistical Institute (NSI) is to provide information and statistics on different issues divided by gender. The data refers to employment-related issues as well as demographic issues. Since 1998, the NSI has, on a regular basis, published a special publication entitled *Employment and Unemployment*, which contains data on levels of employment, the unemployment rate, reasons for unemployment, educational levels, employment in an independent activity, shares in employment and unemployment, employment by sectors and types of activities, involvement in independent activities (i.e. self-employment), participation in qualification courses, participation in small business alternatives of unemployment, breakdown of unemployment by age groups of women, and data about the long-term unemployed.

Because the anti-discrimination act is new and there is a lack of related practice, it is difficult to collect and process related data. However, awareness and activity in this field remain low and the limited number of research and developed statistics for the labor market shows that although there are legal mechanisms for protection, they are not actively used and hidden gender discrimination continues to exist.

Key recommendations

- A separate national strategy dealing with equality between women and men should be developed;
- This strategy should address issues of coordination of state authorities dealing with gender issues, the distribution of functions, the adoption of laws and the establishment of relevant institutions, as well as their funding and financial implications;
- Gender indicators should be prepared so that the National Statistical Institute can collect and process statistical data to monitor gender equality;
- Necessary funds should be ensured to guarantee the establishment of the required institutions;
- A special sub-committee on equal treatment for women and men should be created within the Human Rights and Religious Affairs Committee of the National Assembly;

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- A national council for recognizing and encouraging equality between women and men should be established with the Council of Ministers;
 - An expert on gender issues should be appointed within each ministry;
 - An expert on gender issues should be appointed within each municipality;
 - The Sector on Equal Opportunities for Women and Men at the Ministry of Labor and Social Policy should focus primarily on issues related to equal opportunities and make public announcements of its work and activities;
 - In addition to the LPD a special law on equal treatment for women and men should be adopted, in order to grant positive measures for improving women's representation, especially in the elected bodies.
 - Regulations should be consistent in their use of terminology, in order to ensure a unified administrative and court practice, and avoid grounds for differential interpretation and disputes;
 - Information should be made available about cases of discrimination that are taken to court.

Executive Summary for the Czech Republic

Introduction

Since 2002, the labour law has been enriched with many provisions concerning equal treatment. The legal framework for equality and non-discrimination in employment relationships in the Act No. 65/1965, Labour Code fulfils almost all formal requirements of European law. Attention now needs to be paid to the strengthening of the implementing structures and policies, and programs which would bring the *de facto* situation in line with the law. The application of the law by the Czech courts and administrative bodies will have to conform to the case law of the European Court of Justice, which interprets the equality provisions of the Treaty and the Directives.

In terms of legislation, the lack of definitions of direct and indirect discrimination criticized in 2002 has been remedied. A law on occupational pension security and the law on equal opportunities have still not been passed.

The following policies or initiatives recommended in 2002 have not yet been satisfactorily executed:

- support of self-employed female workers;
- measures aimed at increasing women's salaries and wages;
- support of flexible working arrangements;
- increase of women's influence in party structures;
- specific information campaigns and awareness-raising.

The government has commissioned some research and supported further the establishment of gender statistics, to some extent strengthened the institutional mechanisms on gender equality, and dedicated greater financial resources to the administration of gender equality, but the overall funds dedicated to equality are not monitored. Training programs for the judiciary and lawyers recommended in 2002 have also begun. The Judiciary Academy (educational centre for judges) has since the academic year 2003/2004 included the topic of equality of men and women in the seminars on family and labour law. The courses are however taught by legal experts and not gender experts, so their contribution to understanding gender can be assessed as minimal.

Institutional mechanisms

Since 1998 several bodies have been established which are supposed to deal with issues of equality and discrimination of women. Their powers are restricted to report-writing and issuing recommendations; none of them have the power to assign tasks, give

binding directions or effectively inspect other government bodies. None of them have the competence to independently assist victims of discrimination within the meaning of Article 8a of Council Directive 2002/73/EC.

One such mechanism is the Unit for Equality between Men and Women, which was established as the lowest organizational unit of the Ministry of Labour and Social Affairs within its Department for Integration into the European Union following the Government Resolution 6/98. The Unit was established to coordinate the government policies in the field of gender equality and ensure the harmonisation of the Czech legal system with European law. It is also responsible for drawing up the Priorities and Procedures of the Czech Government in Promoting the Equality of Men and Women and writing the periodical Government Reports on the Fulfilment of the Priorities. In addition, it serves as a Secretariat of the Governmental Council for Equal Opportunities for Men and Women.

In October 2001 the Cabinet issued Resolution 1033/2001 by which it established the Governmental Council for Equal Opportunities for Men and Women (“Governmental Council”). The Governmental Council is a permanent advisory body of the government in the area of creating equal opportunities for men and women. The Governmental Council has no executive or supervisory powers. It can make only recommendations to the government, but it influences the ministries through its members who are deputy ministers. The level they are at in the ministry hierarchies allows them to assign tasks to their subordinates, other sections, and to the gender coordinator.

Government Resolution 456/2001 prescribed the creation of one gender focal point at each ministry. At least half the working time of one civil servant should be dedicated to the coordination of equal opportunities. The responsible official (gender coordinator) should bear responsibility for being the contact person for gender-related issues in the field. Most ministries entrusted a clerk in the human resources department with this task.

Cooperation between the government and NGOs is recommended in the Priorities and Procedures of the Czech Government in Promoting the Equality of Men and Women, but followed only by a part of the ministries. It mainly entails using NGO expertise (training courses, NGO brochures and materials, sending documents for comments to the NGOs), and sometimes other ad hoc measures¹. A more concrete conception of integrating women’s NGOs into the activities of the ministries, however, is missing.

A general concern with the institutional mechanisms in the Czech Republic is the limited understanding of the concept of gender, gender stereotypes, gender equality,

¹ *Report on the Fulfilment of the Priorities and Procedures of the Czech Government in Promoting the Equality of Men and Women*, 12th May 2004, <http://www.mpsv.cz/scripts/clanek.asp?lg=1&id=696> (accessed 6th July 2004), pp. 17–18.

gender mainstreaming, and equal opportunities. The lack of political will at the top level is a significant obstacle, as is the lack of enumeration of the financial resources that should be dedicated, and that are dedicated to equality.

Policies, programs and awareness raising

The national plan of action, or national gender equality strategy, is called the Priorities and Procedures of the Czech Government in Promoting the Equality of Men and Women. The Priorities are divided into 7 areas:

- promotion of the principles of equality of men and women as part of the government policy;
- legal support for gender equality and raising legal awareness;
- promoting equal opportunities for women and men in access to economic activity;
- balancing social position of men and women caring for children and family members in need;
- considering women from the viewpoint of their reproductive function and physiological differences;
- suppression of violence directed at women;
- monitoring and assessing the effectiveness of promotion of the principle of equal treatment of men and women.

The only national program related to gender so far has been the 2003 National Strategy to combat all Forms of Trafficking in People with the Scope of Sexual Exploitation. To date no measures have been undertaken to reduce the gender pay gap.

In the area of policies, much remains to be desired in substantive as well as procedural aspects. A major area of concern is the procedure of setting the tasks and the evaluation of their fulfillment. Most ministries have not commissioned a specific gender analysis of their departmental agenda. The true implementation of equality, i.e. mechanisms and programs that would target the *de facto* situation, has yet to come.

Research and statistics

The characteristics of the female labour force in 2002 were described by the Czech Statistical Office as follows:

Employment of Czech women is high – the **economic participation rate** of women aged 15 and older was 51% (69% of men). Every tenth woman was only employed part-time (every thirtieth man was employed part-time). Ten per cent of employed women worked in their own company, whereas the percentage of men was twice as high. Women employed full-time work 5 hours a week less than men, although women who work part-time work 2.5

hours a week more than men working part-time. The average monthly earning of women is a quarter less than that of men.²

Since the fall of communism, the gender wage gap has been growing. The year 2000 was a turning point, but no substantial improvement can be seen.

There is practically no decision-making field in which women are represented more strongly than men; and the government has not taken any measures to remedy this fact.

The percentages of women in decision-making positions³ in the Czech Republic are as follows:

- Regional presidents and the mayor of Prague (no women at all)
- Top management (eight per cent)
- Senators (12 per cent)
- Banking Board of the Czech National Bank (12 per cent)
- Constitutional Court judges (14 per cent)
- Ministers (after the summer-2004 Cabinet crisis, there are two women in a Cabinet of 18)
- Deputies (17 per cent)
- Deputy ministers (17 per cent)
- Regional authority directors (23 per cent)
- Board of the Supreme Audit Office (24 per cent)
- Supreme Court judges (26 per cent).

Significant segregation of the male and female labour force according to economic sectors exists in the Czech Republic.

Fathers' participation in parental leave schemes has been slowly increasing in the last years, but the gap between the numbers of women and men taking parental leave is still abyssal (the share of men receiving the parental benefit in the years 2001–2003 increased from 0.77 per cent to 0.9 per cent).⁴

² Czech Statistical Office and MLSA, *Women and Men in Data*, 12th December 2003, <http://www.czso.cz/eng/edicniplan.nsf/publ/1416-03-> (accessed 1st August 2004), p. 18.

³ Czech Statistical Office and MLSA, *Women and Men in Data*, 12th December 2003, <http://www.czso.cz/eng/edicniplan.nsf/publ/1416-03-> (accessed 1st August 2004), p. 42.

⁴ *Podpora využívání rodičovské dovolené muži* (Supporting men in using parental leave), Institute of Sociology of the Academy of Sciences of the Czech Republic, October 2003, <http://www.mpsv.cz/files/clanky/712/pruzkum.pdf> (accessed 9th August 2004), p. 24. and following.

Key recommendations

- Government officers at all levels of the administration should be trained on gender issues;
- An evaluation of the fulfilment of tasks should be carried out as a matter of priority, and the process should be given to bodies unaffiliated with their execution;
- Gender should be included as a factor in the creation of the budgets of all institutions;
- An overview of the allocation of funds for gender equality should be made available;
- An equality policy should be established at the regional and municipal levels, and one member of the council should be made responsible for equality, together with the establishment of focal points;
- Trainings and meetings for gender coordinators should be held, and adequate connections to the central government should be established;
- The rules of procedure in government should require a gender analysis for all proposed programs, measures and legislation;
- A mechanism should be secured within the Czech Republic which satisfies the competence required in Article 8a of Council Directive 2002/73/EC;
- The government should create incentives for employers to offer part-time jobs and other flexible forms of work;
- Measures should be introduced to reduce the gender pay gap; for example, employers should be obliged to annually report the overall level of remuneration paid to their employees disaggregated by sex;
- Incentives should be created to support men in the sharing of family responsibilities;
- Measures should be taken to eliminate sex-stereotyped choice in schools, including a revision of all existing textbooks from a gender perspective;
- All ministries should commission a gender analysis of their departmental agenda;
- On this basis, the subsequent formulation of tasks should be elaborated more clearly and in more detail;
- The process of evaluation the fulfilment of tasks should be given to bodies unaffiliated with their execution;
- Specific policies should be complemented with the process of gender mainstreaming; specifically, gender analyses of the fields as the basis for decision-

- making, gender education of all government officers, and consultation and coordination of policies from the gender perspective;
- Specific mechanisms should be created to assess the implementation of equality legislation in practice;
 - The government should establish structures supporting the implementation of the *Acquis Communautaire* related to equal opportunities;
 - In particular, the government should develop programs that promote women entrepreneurs, encourage the sharing of parental leave schemes by both parents, and address the topic of sexual harassment in the workplace;
 - In the field of social security the amount of benefit connected to motherhood and parenthood should be levelled;
 - Occupational pension schemes should be adopted so as to conform with the principle of equality;
 - The retirement age for male and female civil servants must be equalised, as the pension benefit constitutes pay within the meaning of the EC Treaty and case law;
 - The MLSA should use commercial channels (for example billboards, TV and radio spots, and banners) for the promotion of equality;
 - In particular, campaigns should be developed to:
 - promote laws on gender equality once adopted,
 - fight gender stereotypes in families,
 - promote sharing of family responsibilities and especially support fathers on parental leave,
 - explain the concept of sexual harassment and encourage persons to fight this phenomenon,
 - target employees and inform them of their rights resulting from the principle of equal treatment and how to apply them,
 - target employers and inform them of their obligations.
 - The monitoring of litigation in the field of discrimination against women should be done more properly;
 - Cases decided by the courts should be publicised by the Ministry of Justice as part of an information campaign on equality.

Executive Summary for Estonia

Introduction

Although the process of transposing the *Acquis Communautaire* was well advanced by 2002–2003, Estonia still lagged behind in some areas, including in the field of gender equality. As of this writing, the national laws have been essentially harmonised with the *acquis* on gender equality. As the legal provisions in this area were only adopted relatively recently, it is difficult to make far-reaching conclusions on their application at this stage. A preliminary analysis though reveals many shortcomings and inconsistencies with European standards in the implementation of these legal norms.

The main development since 2002 has been the adoption of the long-awaited Gender Equality Act (hereinafter “GEA”), which entered into force on 1 May 2004. The purpose of this Act is to ensure the principle of equal treatment as provided for in the Constitution of the Republic of Estonia, and to promote gender equality as a fundamental human right and a general good in all areas of social life. For the first time, Estonian legislation defines terms such as ‘gender equality,’ ‘equal treatment,’ as well as ‘direct’ and ‘indirect’ discrimination, and ‘sexual harassment.’

By transposing EU equality standards into its national laws, Estonia initiated a very formalistic reform. The radical legal change took place though without substantial consultation with persons to whom new norms would apply,¹ and there was no real public debate.

By completing the first essential phase of legal reform in order to achieve real equality, Estonia has only taken the first step. In order to make gender equality a reality, many active measures must still be taken and new practices must be introduced. Without these, the deep structures of inequality risk remaining intact for a long time to come.²

Although new legislation grants powers to several existing institutions and creates new bodies for gender equality, effective remedies that would be easily available to every

¹ However, a recent study (from 2003) by the Estonian Open Society Institute on attitudes towards gender equality legislation reveals that 81 percent of people interviewed back the inclusion of the principle of equal pay for work of equal value into legislation. 75 percent are in favour of a law that would guarantee women equal opportunities with men to enter any job. 91 percent support legal norms that protect pregnant and child caring women from employers’ arbitrary actions.

² The presentation *Has legal reform in Central and Eastern European States Concerning Gender Equality Been Successful?* for the EU-China Human Rights Network seminar on Gender and Law in Beijing 2004 was used in writing this introduction.

citizen are not yet present. Gender equality institutions are not systematic, and there is a possible overlap of powers possessed by several institutions. Apart from the obligations imposed on employers to promote gender equality foreseen in the GEA, there are no effective means to prevent employers from continuing discriminatory practices, especially sanctions or fines within the meaning of Directive 2002/73/EC that ought to be transposed by October 2005.

Institutional mechanisms

The ministerial bureau of gender equality at the Ministry of Social Affairs was reorganised and enlarged by decree in May 2004. The functions of the department include elaborating gender equality politics, and co-ordinating the elaboration and implementation of gender mainstreaming measures.

Article 9 of the GEA provides a function of promoting gender equality in all agencies of state and local government. They are required to promote gender equality systematically and purposefully, and to change the conditions and circumstances that hinder the achievement of gender equality. When planning, implementing and assessing national, regional and institutional strategies, policies and action plans, the agencies are to take into account the different needs and social status of men and women and consider how the measures applied and to be applied will affect the situation of men and women in society. Considering the overall level of awareness on gender equality issues, guidelines and consultations will need to be provided in order to guarantee the fulfilment of the obligation pursuant to Article 9.

The department has the power to draft governmental and ministerial policy decisions in the respective area. It also engages in dialogue with the concerned interest groups, elaborates surveys, and reports on the compliance of internal legislation with international standards. Its main concrete task is to co-ordinate the work of strategies to integrate the principle of gender equality into all governmental and municipal politics. The department may also counsel anyone on questions of equal treatment or help victims of discrimination. The Estonian National Gender Equality Strategy, which is being elaborated under the coordination of the Gender Equality department, should be concluded by the end of 2004.

An inter-ministerial commission for the promotion of gender equality was created through Governmental Order of 27 November 2003. The Commission's essential task is to draft, in accordance with Article 2 of the EC treaty, a strategic development plan to include the eradication of gender inequality and promotion of equality principles into the plans of actions, projects and programs of all public authority bodies.

The general functions of the Ministry of Social Affairs in the field of gender equality were specified by the GEA, creating more detailed rights and obligations in order to supervise the implementation of the GEA. The ministry provides consultations on

matters related to the implementation of the principle of equal treatment, and gives instructions for the implementation of the act. The ministry also publishes reports on the implementation of the principle of equal treatment for men and women.

The most important institutional innovation contained in the GEA is the creation of a new body that aims to combat discrimination and promote gender equality, and also receive applications from citizens. Following the example of posts of Gender Equality Ombudspersons set up in some countries, the GEA foresees the post of a Gender Equality Commissioner. According to the Act, the Commissioner shall be an independent and impartial expert who acts independently and monitors the implementation of the GEA. Although the GEA entered into force on 1 May 2004, the Gender Equality Commissioner has not yet been appointed. This is due to the need to change the State Public Servants Official Titles and Salary Scale Act, which is expected to be completed shortly. It is hoped that a Commissioner will be appointed in the first months of 2005.

Policies, programs and awareness raising

The overall goals of the 2004 National Employment Plan are to increase employment, avoid long-term unemployment and prevent people in at-risk groups from 'falling out' of the labour market. In order to achieve these goals, several gender-specific means are noted and envisaged in the national plan.

The most important active employment measures are public employment offices and their services; training of unemployed workers; subsidies for employers who employ less competitive unemployed workers; and start-up capital to begin entrepreneurial activities.³ Although several development plans emphasise active employment measures, public expenditure on these measures is relatively small when compared with other European countries. The number of participants in these measures has in fact decreased since 1995. The state mostly provides trainings; wage subsidies are not at all common.

When assessing the general awareness on gender equality issues, some positive developments can be noted, although there is still a lot of room for improvement. The media has slowly become more interested in the issue and the number of articles on gender equality has been increasing. On the other hand, there is a need to make the GEA and its contents more familiar to citizens. This should include *inter alia* awareness raising by employers in the workplace. Expectations from the process of awareness raising should be realistic, because people's attitudes do not change overnight, but in the period 2002–2004 some positive developments have certainly been noted.

³ PRAXIS Reelika Leetmaa, Andres Võrk, Raul Eamets, Kaja Sõstra *Evaluation of Active Labor Market Policies in Estonia*.

Research and statistics

Women employees continue to earn almost 25 percent less than their male counterparts. The gender gap has remained constant throughout the decade and is visible in all fields of professional life. According to the Estonian Social Insurance Board, in the capital city the gender pay gap is as high as 30 percent.⁴ A new survey on the gender pay gap in the Estonian labour market was published recently. It analysed the main features and patterns of paying wages to male and female employees, the overall status of female workers, and reasons for gender inequality.

Differences in pay are not only apparent when comparing the average pay for male and female workers. Segregation in the labour market has also led to a situation in which poverty is an issue for women and children. According to data from the Estonian Statistical Office, there is a difference in annual disposable income per household member depending on the sex of the head of the household. A difference in income is visible in the total income, and income from wage labour. In 2003, the gender pay gap had increased to 11.4 percent.

According to the Estonian Social Insurance Board, as of 30 September 2004 parental benefit (100 percent of the previous monthly wage) was paid to the mother in 98.3 percent of cases, and to the father in 1.5 percent of cases. It is still very rare that fathers take parental leave, although they have been granted this right in law for many years.

Estonian women spend on average twice as much time doing housework than men (four hours per day and 2.2 hours per day respectively). At the same time, men have longer working days in paid employment.⁵

Key recommendations

- The process of setting up new institutional bodies foreseen in the GEA should be finalized. In particular, the rapid appointment of the Gender Equality Commissioner is critical;
- Now that the GEA has been adopted, more attention should be paid to awareness raising of its contents for citizens. This should include the informing of employees by employers of their rights enshrined in the Act (this obligation is also set forth in the GEA);
- The process of awareness raising on equal treatment via media channels should be actively continued and promoted. The establishment of new strategies for awareness raising by institutional bodies foreseen by the GEA (for example, the

⁴ A. Reinap, *Naised teenivad meestest neljandiku võrra vähem* in *Postimees* 8.4.2004.

⁵ Ü. Mattheus, *Naised teevad meestest poole rohkem kodutöid*, in *Postimees*, 29.7.2004.

gender equality council and commissioner) is necessary, as the adoption of the Act is an important message that must be conveyed to every citizen;

- Employers should become more active, and their contribution to promoting equal treatment should be systematically monitored by the relevant bodies set up by the GEA. A regulation of the Government of the Republic should be adopted establishing a procedure for collecting statistical data and a list of data;
- Awareness should be raised on the possibility of receiving consultations by an official of the Ministry of Social Affairs on matters related to the implementation of the principle of equal treatment for men and women. The office hours of the consultant should be published on the website of the Ministry of Social Affairs, as foreseen by the GEA;
- The role of trade unions should be stronger. They should have important tasks in the process of awareness raising and information distribution. In addition, effort should be made to enhance effective co-operation between trade unions and the relevant government offices;
- In order to mainstream gender equality, the issue should be included in programmes at different levels of the educational system;
- In the future, the position of the Commissioner should be strengthened in order to provide the post with decision-making powers in specific cases, taking the powers of the Legal Chancellor as a role model (currently it may only issue opinions). The institution of the Commissioner should develop into a real specialized out-of-court institution for settling disputes relating to discrimination on the basis of gender;
- In practice, the Commissioner should also have a bureau with advisers in order to support the Commissioner in her/his work;
- Despite the inclusion of the right to equal access to employment, much remains to be done in terms of effective implementation of the rights of job applicants. For example, they should be granted the right to bring an action before a Labour Dispute Committee in the Individual Labour Dispute Resolution Act. Their rights should also be stipulated in the Code of Civil Procedure;
- Judges and lawyers should be trained on gender equality issues, including the principle of reversing the burden of proof;
- In order to encourage men to take parental leave, the discriminatory general provision foreseeing the right to receive parental benefits only for the mother until the child is six months old should be amended to allow parents to choose who will care for the child and receive the benefit.

Executive Summary for Slovakia

Introduction

The adoption of the Anti-discrimination Act on 20 May 2004 can be considered a great leap in terms of equal treatment. The concept of discrimination, as legally defined, is well-established and goes even beyond the concept of discrimination as introduced in Directive 2002/73/EC amending Directive 76/207/EEC. Direct and indirect discrimination are defined in accordance with the definitions contained in Directive 2002/73.

The concept of harassment in Slovakia goes even further than the concept of harassment contained in the Equal Treatment Directive and its amendment. The added value is undoubtedly the second part of the definition, specifying in more detail the conditions under which certain behaviour can be found unacceptable. However, one drawback of the concept of harassment in Slovak legislation is the fact that no specific definition of sexual harassment is contained in any Slovak legislation that contains an equal opportunities/anti-discrimination clause.

The Labor Code does not contain a definition of a part-time worker; nor does it contain a specific definition of comparable full-time worker. Article 49 only contains a general formulation that an employer may agree with an employee in an employment contract on a reduced working time compared to the statutory weekly working time.

The system of social security in Slovakia has undergone numerous changes (both structural and “cosmetic”) in the last few years. These changes can be characterized as common for a society burdened by the weight of a residual socialist regime, and by challenges stemming from the requirements of a market economy and merit system, and also from the requirements of EU accession. However, the end of year 2003 and the beginning of year 2004 brought changes that significantly reshaped the whole concept of social security. These changes were: adopting the Act No 461/2003 on Social Insurance, and adopting the Act No 43/2004 on Old-age Pension Saving.

Despite some positive legal developments in the field of equal opportunities, much remains to be done in terms of implementation.

Institutional mechanisms

Policies are not backed by sufficient institutional mechanisms that would be supported by appropriate expertise of the actors involved and by sufficient budgetary resources. There is no body that would inter-sectorally deal with equality of women and men at the executive level. Moreover, neither ministries nor any other bodies partially

responsible for implementing gender equality policies have units that would act in these institutions as coordinating and interdepartmental bodies with appropriate expertise (possibly apart from the Ministry of Employment, Social Affairs and Family which has the Department for Equal Opportunities and Anti-Discrimination – but nevertheless this ministry has not adopted any mainstreaming strategy and the gender optics is not present in other departments of the Ministry). Similarly, most of these bodies are centrally-oriented and do not have any regional units.

One institutional mechanism in Slovakia is the Department of Equality and Anti-Discrimination,¹ a body placed at the executive level that functions as a section of the Ministry of Employment, Social Affairs and Family of the Slovak Republic. Organizationally, the department falls under the Section of Social Inclusion.

The Department was established in 1999, and in 2003 its competencies were extended to include the field of discrimination (originally, it was only supposed to deal with equal opportunities).

As stated in the Organizational Order, the Department, in co-operation with other departments, shall carry out the tasks of the Ministry in the field of equal opportunities of women and men and in the field of anti-discrimination. The Department has, however, no competence to take binding enforceable decisions and no competence to sanction possible perpetrators in cases of possible breaches of the equal treatment principle.

New significant tasks have been allocated to the Slovak National Center for Human Rights (established in 1994) through an amendment to the act governing the functioning of the Center, realized through the adoption of the Anti-Discrimination Act on 20 June 2004 that is in effect from 1 July 2004. The tasks the Center is since obliged to perform include:

- monitoring and evaluation of the observance of the principle of equal treatment according to the Anti-Discrimination Act;
- realizing research and surveys in order to provide data in the field of human rights;

¹ Most of the information about the Department of Equal Opportunities and Anti-Discrimination was acquired through an interview taken at the Department on 7 July 2004 with Ms Kusendová and Ms Vránová. The rest of information was gained by interviews taken afterwards either by phone or by email, with Ms Mesochoritsová, the head of the Department, with Ms Kusendová, with Ms Vránová, and with Ms Bartoňová. The author of the report would hereby like to thank them for all the prompt and willing assistance that followed our numerous questions and requests.

- preparing educational activities and participating in informational campaigns with the aim to increase tolerance in society;
- providing legal aid to victims of discrimination and intolerance;
- publishing expert opinions, either on request or at their own initiative, on the observance of the principle of equal treatment;
- providing library services;
- providing services in the field of human rights.

The Center is also entitled to represent a litigant in proceedings concerning breaches of the principle of equal treatment.

Systematic training is lacking for actors involved in dealing with gender and equality issues in Slovakia (including legal, political, social, philosophical and other aspects) who are responsible for the implementation of policies at all levels.

Policies, programs and awareness raising

There is no comprehensive gender equality strategy in Slovakia. There are two main policy documents concerning gender equality – the National Action Plan for Women and the Concept of Equal Opportunities for Men and Women. The National Action Plan was adopted in 1997² on the basis of the Beijing Platform and it is the main policy document setting basis for equal treatment policy. The Concept of Equal Opportunities for Men and Women was adopted in 2001. Due to the accession of the Slovak Republic to the European Union, the duration period of the National Action Plan should be shortened,³ and in 2005 it will be replaced by a new complex gender mainstreaming policy document that should substitute both the National Action Plan and the Concept of Equal Opportunities.⁴

The policies still lack a fully-integrative (mainstreaming) approach that would take into consideration all areas of life and which would be supported by appropriate institutional mechanisms. Basic policy documents have also been drafted without the corresponding financial backing to achieve the articulated aims.

The formulations of the priorities and tasks in the policy documents are often very general and abstract. Also, in some cases they omit important issues that should be dealt with at policy levels; for example, educational environments and gender stereotypes, and sexual harassment.

² See the Decision of the Government No 650 of 1997 adopted on 16 September 1997 on Adopting the National Action Plan for Women.

³ Originally, the duration of the National Action Plan was planned for 10 years, i.e. till 2007.

⁴ Currently, the aims and tasks of the policy documents are not updated.

In the implementation process, many of the aims and tasks are not further converted into appropriate programmes. Often a task is considered to be fulfilled by making a legislative change which, although it is a prerequisite for changing the situation in a particular field, is only a departure point for making structural changes (for example, in the case of flexible working arrangements).

So far, no campaigns have taken place on gender equality or the prohibition of discrimination on the basis of sex and gender, on the gender pay gap, family reconciliation or sexual harassment (or harassment in general). The only gender-related campaigns that have taken place in Slovakia were oriented towards violence against women, reproductive rights and trafficking. All campaigns were organized by non-governmental organizations with no state support.

Research and statistics

According to data from 2002, women's average salary in 2002 was 71.7 per cent of men's salary – 16.9 per cent under the national average (compared with men's average pay which was 15.8 per cent above the national average). The pay gap exists in all age- and education categories. The biggest difference was recorded in the category of respondents between 30-39 years of age. With higher education, the pay gap has a tendency to increase: women with a university degree earned 65 per cent of the income of their male counterparts.

Due to the traditional understanding of gender roles and the existing pay gap, it is mostly women (97.5 per cent) who take parental leave. The “female” dilemma of choosing between a professional career and family care is also influenced by the low affordability of childcare facilities.

Public access to information about gender equality is generally low and complicated. In general, persons who wish to learn about issues connected with equal opportunities or gender equality need to undertake serious research. In addition, many of the institutions that should, as a part of their mission, focus on gender equality (and on equality as such) – such as the Ombudsman or the Slovak National Center for Human Rights – contain very little or no information dealing with the topic. Moreover, a lot of information on gender equality is spread over numerous public institutions and these bits of information are often not accessible. There are, however, some NGOs whose websites deal with equality, prohibition of discrimination and gender equality issues, though only to a very limited extent and not in a complex manner.

There are also a few publications dealing with gender equality, including *Slovakia 2003: A Global Report on the State of Society* (this publication contains chapters on gender equality and the public participation of women);⁵ *Gender Equality: Why we*

⁵ Institute for Public Affairs, Bratislava 2004.

*Need It?*⁶ and *On the way to the European Union: A Guide not for Women Only.*⁷ However, due to their dates of publication, not all of the information remains valid, and they do not cover the most recent legislative and implementation developments (for example, the adoption of the Anti-discrimination Act or policies related to EU structural funds).

Key recommendations

- The government and all other responsible actors should undertake a more comprehensive and integrative approach towards gender equality policies, and a gender mainstreaming approach should be made commonplace;
- A gender assessment of newly-prepared legislation should be required;
- Legislation in other fields (such as taxation and social security) should be reassessed in terms of their gender impact;
- A coordinating institution at the governmental level should be developed with appropriate powers, expertise and resources, with units containing appropriate expertise in all relevant institutions at central and local levels;
- Policies should be supported by appropriate programmes with the potential to effectively contribute to an improvement in the field of gender equality. Where appropriate, partial policies on sectoral levels should also be prepared and implemented;
- Gender equality should more clearly and expressly be seen as a priority for the government. More publicity should be devoted to policies and programmes in the field of equal treatment for women and men, and more emphasis on political responsibility should be put on individual responsible actors;
- Publicity should also comprise spreading information on legal means of redress (including practical aspects) in cases of breaches of the principle of equal treatment, with an emphasis on the reversed burden of proof;
- The media should take an active role in spreading information about equal opportunities;
- Appropriate methodologies and mechanisms should be developed to evaluate and assess the implementation of policies. More actors (both governmental and non-governmental) should be involved in such monitoring and evaluation;

⁶ E. Kvapilova and S. Porubanova, *Rodová rovnosť: prečo ju potrebujeme?* (Gender Equality: Why We Need it?) Centre for Work and Family Studies, Bratislava, 2003.

⁷ *Na ceste do EÚ. Sprievodkyňa nielen pre ženy* (On the way to the European Union: A Guide not Only for Women), Aspekt, Bratislava 2002.

- An inter-sectoral coordinating body with responsibilities and competences should be set up at the executive level;
- Already existing bodies should be restructured in order to make gender equality issues a part of the everyday agenda of all organizational units;
- Relevant centrally-established bodies should consider establishing regional bodies where appropriate;
- An independent body in the field of enforcing gender equality with appropriate competencies – such as an ombudsman for equal opportunities – should be considered;
- All actors involved should receive training on gender issues;
- The field of education and media should also take a leading role in building public awareness and positively influencing the situation in the field of equal opportunities;
- The Ministry of Education should adopt a comprehensive approach towards tackling the issues of gender roles and gender stereotypes;
- Adequate financial resources should be guaranteed for the implementation of the above recommendations.

Executive Summary for Hungary

Introduction

The change of government in May 2002 brought important changes to the approach to gender equality policy in Hungary. The shift from a conservative government to a socialist liberal one was clearly reflected in the field of equal opportunity policies. In addition, the accession of Hungary to the EU spurred some improvements.

The first and most important change was the shift in the governmental approach to the need for a comprehensive anti-discrimination policy in Hungary. In November 2002, soon after the governmental changes, the preparation of the Hungarian comprehensive anti-discrimination act was launched by the Ministry of Justice. The Act was accepted by the Parliament in December 2003 and entered into force in January 2004. From its inception, the draft proposed to tackle discrimination on all grounds, including gender, together. It proposed to establish only one specialised agency, with eventually separate departments for each ground of discrimination.

A second element of change concerned the gender equality mechanism. In 2002, the newly elected government repeatedly changed the status of the mechanism. The changes on the one hand gave the issue a different, higher status. On the other hand, the issue of equal opportunities on all grounds, including gender equality, was brought under a single institutional umbrella. Only one small department of the mechanism deals with gender equality.

A third major trend of change has been a shift in the process of Hungary's accession to the EU from an emphasis on legal harmonisation towards an emphasis of policy implementation. Within this framework, several policy documents have been developed, and policy processes have begun that are crucially relevant from the point of view of equal opportunities on grounds of gender. All of these processes treat equal opportunities and gender equality as important horizontal principles.

With regard to the equal treatment between women and men, the most important and most comprehensive step in Hungarian legislation in the past two years has been the Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities (hereinafter called the AET). The act came into force in January 2004. Its scope extends to the entire public sector, and with some exception in the private sector. The scope of the Act does not extend to – *inter alia* – family law relationships and relationships between relatives. Article 7 (1) of the Act states that “direct negative discrimination, indirect negative discrimination, harassment, unlawful segregation,

victimisation, and any orders issued therefore constitute a breach of the principle of equal treatment [...]”.

The Act defines in more detail the concepts of direct and indirect discrimination, harassment, unlawful segregation, instruction to discriminate and victimisation. It provides for shifting the burden of proof and allows for *actio popularis*. The AET initiates the creation of an Equal Treatment Authority as of January 2005, and the launching of a National Equal Opportunity Programme. The objectives of the Program are to prevent negative discrimination and to promote the equal opportunities of certain specific social groups in all aspects of life.

The law is relatively progressive in its definitions and in the forms of discrimination that it covers. However, the Equal Treatment Authority, judges and law enforcement professionals are to play an active role in the future to interpret and complete the definitions with real content.

The main criticisms formulated against the Act have concerned the fact that by regulating discrimination on all grounds within the framework of one single law, it remains on a very general level and the specifics of the different grounds may be diluted. A major evaluation and criticism of the Act in terms of its adequacy to pursue gender equality was formulated by the Hungarian Women’s Lobby in their document commenting on the Draft Act launched in November 2003.¹ While the Alliance appreciated the political will to finally take on board the issue of anti-discrimination after several years of neglect, they especially criticized the Act’s inability to deal with the specific forms of discrimination that occur in the case of the different grounds, and especially on grounds of gender. They warned that the absence of specific gender equality related articles in the act might maintain the need for a separate gender equality act in Hungary. Another criticism concerned not so much the law, but the policy surrounding it and the lack of encouragement and support for victims, relevant NGOs and society to work towards the implementation of the law. The Alliance also warned that the Act does not deal with several major fields of discrimination, such as discrimination occurring in court procedures and discrimination occurring through discriminatory laws.

Although many changes, brought about primarily by the AET, have been introduced in Hungarian legislation, there remain some gaps and discrepancies as measured against

¹ Opinion and critique of the Hungarian Women’s Lobby concerning the Draft Act on equal treatment and the promotion of equal opportunities. 28 November 2003. Magyar Női Érdekérvényesítő Szövetség bírálata és javaslatai az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról szóló törvényjavaslathoz. 2003. November 28. <http://habeascorpus.hu/allaspont/kritika/antidiszkr.kozl.2003.11.28.htm>.

the words of the Directives. Gaps are caused in some places by not conforming *de jure* to the text of the Directives. In other cases, and this is more prevalent, inconsistencies can be derived from the failure of the Hungarian policy framework to follow the spirit of the Directives – to move beyond the wording of legal amendments and implement general gender equality. The major problem is the lack of or sporadic nature of comprehensive, informative, awareness raising policies, programs, campaigns and materials, wide range training programs for the policymakers and law enforcement officials concerning equal treatment and gender equality.

Institutional mechanisms

A major concern in this area is the absence of a significant gender equality mechanism in Hungary. While elevation of the mechanism to the ministerial level is a very welcomed fact, concerns can be formulated about the weakening of the specific gender equality ‘voice.’ It seems, based on trends that have prevailed in the last years (since June 2003), that merging the gender equality mechanism with other governmental mechanisms in charge of equal opportunity policies on other grounds has led to the weakening of the gender equality voice. The absence of this, as well as a specific gender equality ‘face,’ is in itself a problematic feature in a policy context where gender equality concerns are not on a higher segment of the policy agenda. The creation and maintenance of a distinctive gender equality voice within the government carries an important symbolic message towards the polity including both its female and male members. This does not necessarily entail an entirely independent gender equality mechanism, however. There can be careful ways to design such a symbolically representative mechanism even within a general equal opportunity policy framework as the one launched in Hungary in mid 2003.

Beyond public representation, another issue of concern for the mechanism is its resources, both human and financial. Part of the reason why the gender equality mechanism lost its distinctiveness is the very limited resources and weight it has within the Office for Equal Opportunities. The staff is incredibly small considering the tasks gender equality mechanisms are usually assigned within the policy environments of most EU member states.

A final more general concern is the attribution of tasks and development of an operational strategy for the Hungarian gender equality mechanism. Tasks attributed to the mechanism by the annual report remain at a general level. Most activities of the Directorate concentrate on awareness raising, with very little emphasis on other activities that could contribute to the promotion and better implementation of gender equality policy in Hungary. Several successful gender equality mechanisms operate in different member countries of the European Union, and there are very accessible ways to learn about the good practices and also failures of different other gender equality mechanisms that have a longer history on which to draw than Hungary.

The Council for Women's Affairs, seen in the Hungarian policy framework as the main institutional guarantee for the implementation of gender mainstreaming, has been inoperative since 2002. This is a major concern both because this is the only forum in Hungary where women's NGOs, gender equality policy experts and representatives of the government could regularly consult on gender equality issues, and because in its absence the Hungarian approach to gender mainstreaming loses its legitimacy. There are two possible ways to address this problem. One solution is to re-launch the Council, appoint – re-appoint its members and redefine its tasks so that it can meaningfully start implementing a gender mainstreaming strategy in Hungary. Alternatively, the tasks of the Council could be regrouped to a strengthened gender equality mechanism. In this case, the mechanism's approach to involving women's NGOs and experts in its work, and undertaking co-ordinative roles with respect to all governmental activities in the field of gender equality, should be strengthened considerably.

Policies, Programs and Awareness-raising

The major concern in this field is the absence of a co-ordinated comprehensive gender equality policy in Hungary, a concern that is clearly related to the above discussed absence of a significant gender equality mechanism. An analysis of the situation in Hungary shows that different fields of relevance for gender equality might have policies or programs dealing with gender equality, but there is an absence of a co-ordinated strategy that would give a direction and an evenness to progress in the field of gender equality.

Research and statistics

Gender segregated data² reveals that 45% of all employed are women; 96% of office workers are women; 65% of assisting positions requiring higher education are women; 10% of managers in the private sector are women and 30% of entrepreneurs are women.

Despite the higher level of education of women, their brut average income is 19% lower than men's. In positions of comparable income both in the private and the state sector, women are paid on average some 13-14% less than men. Women are over represented in poorly paid state sector jobs, such as health care and education.

Women are very poorly represented in national politics. There was a slight increase in their representation with the 2002 elections: the number of women MPs between 1998 and 2002 from 32 to 35 meaning, 9.1% of all MPs. From this total, MSZP has 23 women MPs, FIDESZ has nine, MDF has one, and SZDSZ has two. An interesting improvement can be noticed with the European elections when the FIDESZ-MPSZ list had six women among its 18 candidates (three out of its 12 MEPs are women), the MSZP list of 24 had five women on its first ten spots (four out of its nine MEPs are

² Data in this section is 2003 data from National Employment Action Plan. p. 43.

women). The liberal SZDSZ had eleven women candidates on a list of 24 (neither of its two elected MEPs were women³). Finally, the MDF had one woman on the first ten spots of candidates, in the first spot; she entered the EP⁴.

Key Recommendations

- The Minister for Equal Opportunity should keep the issue of gender equality as high on the agenda as equal opportunity concerns on other grounds. Regular media statements and press releases should be launched in which timely gender equality issues are commented upon;
- The Directorate for Gender Equality and its legal successor should strive to have an independent and distinctive public voice and face within the Office, be present in all public activities related to gender equality policy, participating in all relevant policy debates, and public debates, taking part in important women's NGO meetings, and launching consultation processes with established feminist experts. A distinctive newsletter and annual report, and a separate branch on the website would be possible first steps;
- The permanent staff of the Directorate should be increased. Policy experts on gender equality policy should be involved regularly in the work, possibly on a permanent basis;
- Tasks attributed to or considered important by the Directorate could be subcontracted to women's NGOs, in this way promoting the development of a policy sensitive proactive feminist civil society, but also bringing about a more efficient functioning of implementation of gender equality policy;
- The budget of the Directorate should be increased accordingly to allow for involving more staff and experts and to allow for tasks and resources to be allocated to NGOs;
- Policy research should be initiated and funded by the Directorate aiming to develop a comprehensive strategy for the mechanism to pursue. Research should investigate possible tasks to be fulfilled, organisational issues, alternatives with respect to increasing available resources – both human and financial;
- The Directorate should develop a comprehensive strategy or action plan for promoting and implementing gender equality policy in Hungary, applicable both for the short term (next one year) and for the long term (next five years), but detailed enough to propose clear specific targets for every relevant sector, to

³ Recently the first (male) candidate stepped down and was replaced by the third candidate on the list of the party: a women. The balance of liberal MEPs is now 1-1.

⁴ <http://www.valasztas.hu>

allocate tasks, people and resources. The strategy should be developed in a participatory manner, involving experts and NGOs;

- A regular internal and external monitoring, evaluation and review mechanism for the strategy should be set in place. An inter-ministerial committee (or make use of the Council for Women's Affairs) for periodical evaluation and review of the strategy should be formed. All relevant Ministries should have their appointed representatives in charge for gender equality issues. Policy experts and NGOs should also be involved in the process;
- Horizontal gender segregated data at all governmental levels in all sectors should be generated systematically;
- The Directorate for Gender Equality should maintain a database of up-to-date gender segregated data where feasible and data sources;
- The Directorate should maintain a database of all gender equality related litigation;
- The Government, and specifically the Directorate, should encourage research on gender equality policy in Hungary and its compatibility with European standards expressed both in terms of hard law and in terms of softer policies.
- The Council for Women's Affairs should be relaunched, or the tasks for coordinating the implementation of gender mainstreaming in Hungary should be attributed to another body, possibly to an enhanced gender equality mechanism;
- A separate gender equality chapter to the National Equal Opportunity Program should be developed;
- Following the spirit of the National Employment Plan within the framework of the gender equality strategy, separate chapters should be dedicated to comprehensive policies (not just small programs) for addressing the issues of:
 - Sharing unpaid work between parents, for example by introducing forms of childcare benefits that can only be claimed by fathers, and by launching widespread awareness raising campaigns on the issue;
 - Facilitating the re-entry of women into the labor market, by allowing part-time and flexible work in parallel with certain forms of childcare benefits, and by providing more flexible child care facilities (accommodated to customary working hours);
 - Developing a chapter addressing sexual harassment. Employers should be required to develop their own company level procedures for sexual harassment to be included in their equal opportunity plan; awareness raising campaigns should also be launched;

- Developing a chapter concerning the improvement of the political representation of women. Widespread public debate on the issue of quotas should be initiated, and women politicians should engage in and discuss the issue.

Executive Summary for Lithuania

Introduction

European integration spurred many changes to the legal framework in Lithuania, including those related to gender equality, and since 2002 a number of amendments have taken place. In particular, the Law on Equal Opportunities for Women and Men was amended several times in the period 2002–2004 to include the missing provisions of the EU Directives, taking into account the new Equal Treatment Directive.

In 2002, with the support of the United Nations Development Program and the Office of the Equal Opportunities Ombudsperson, the Lithuanian Government initiated the development of a new law on anti-discrimination that would prohibit the violation of a person's rights on grounds of age, sexual orientation, disability, racial and ethnic origin, religion or belief. The new Act on Equal Treatment was passed on 18 November 2003 and entered into force on 1 January 2005. The new legal act was passed with a considerable majority in the Parliament; nevertheless women's activists raised concerns about attributing its supervision to the Office of the Equal Opportunities Ombudsman. In particular, risks were expressed that the Office will be overwhelmed with complaints of other forms of discrimination, thereby severely diminishing the attention paid to gender problems.¹ The expansion of the mandate has been referred to by others, though, as an undoubtedly positive development that will allow combining investigations of several grounds of discrimination.

Despite positive changes in field of legislation enshrining the principle of gender equality, shortcomings remain in terms of complete alignment with the *Acquis Communautaire*. For example, definitions still fail to reflect certain aspects of the principles set forth in the Directives. The term *equal opportunities* in the Act on Equal Opportunities of Women and Men is vaguely defined as the implementation of human rights guaranteed in international instruments of human and civil rights and in the legislation of the Republic of Lithuania. It does not include equal treatment in relation to conditions to self-employment and membership of, or involvement in, an organisation of workers or employers or any organisation whose members carry on a particular profession as required in the new Equal Treatment Directive. The term *direct discrimination on grounds of sex* fails to address situations where one person is treated less favourably than another person would be in a comparable situation.

¹ Lyties dimensija socialinės kaitos procese (Gender Dimension in the Process of Social Change) by Giedrė Purvaneckienė, 2003, available from Internet at <http://www.lygus.lt>.

Although the Act on Equal Opportunities of Women and Men obliges employers to implement the equal rights of women and men in the workplace, no legal act encourages them to promote the principle of equal treatment in a planned and systematic way, for example by having to produce equality plans or other pro-active means to improve gender equality in the workplace.

Institutional mechanisms

The Office of the Equal Opportunities Ombudsperson, which is an independent state institution answerable to the Parliament, is a strong body with appropriate authority. Established in 1999, the Office is one of the key institutions within the gender equality machinery. It takes overall responsibility for the supervision and implementation of the Act on Equal Opportunities for Women and Men in Lithuania. The Ombudsperson investigates individual complaints on gender discrimination and sexual harassment; submits recommendations and proposals to the Parliament, governmental institutions on the priorities of gender equality policy, including recommendations on amendments to relevant legislation. In cooperation with other office officials, the Ombudsperson supervises mass media so that it does not place discriminatory advertisements and does not treat one gender as in any way superior or better than the other. In addition, the Ombudsperson may participate in interviews for a job and admission tests at educational institutions as an observer.

The decisions of the Ombudsperson in cases of discrimination on grounds of sex include the right to refer the material of the complaints to pre-trial investigation bodies; and to address the institutions with a recommendation to discontinue the violations of the Law on Equal Opportunities for Women and Men. The Ombudsperson has been granted the right to investigate administrative cases and impose administrative sanctions for violations of the Law on Equal Opportunities for Women and Men, which is one of the most important and effective tools of the Lithuanian gender equality policy.

The existence of the Ombudsperson's institution is of an undeniable importance since it provides victims of discrimination with an easily accessible and relatively speedy remedy. As set forth in the Act on Equal Opportunities of Women and Men, the complaint must be investigated and the complainant must be given a reply within one month of receipt of the complaint. If necessary, the Equal Opportunities Ombudsperson may extend the time limit of investigation for up to two months.

By 2003, the Equal Opportunities Ombudsperson had investigated 218 complaints and conducted 53 investigations at its own initiative. Between January and August 2004, the Ombudsperson received 34 complaints and started 10 investigations on her own initiative. Statistics by gender vary each year; on average, more complaints are submitted by women, though men are active as well.

The recommendations of the Equal Opportunities Ombudsperson have a binding character, and persons obstructing the Ombudsperson to exercise his/her duties are held liable under the law and face administrative sanctions. The majority of the decisions of the Ombudsperson have been duly implemented by public institutions as well as private companies so far. For the first time, in 2004, a decision of the Ombudsperson was appealed to the court by the chief of a private company who was obliged to discontinue a discriminatory commercial on TV and in other public places and to pay an administrative fine to the state budget. Court proceedings were still underway at the time of writing.

In ten months of 2004, 11 violators of the principle of equal treatment as set in the Act on Equal Opportunities of Women and Men were sanctioned with administrative fines.

Policies, programs and awareness raising

A big impetus to the implementation of various programs on gender equality was given by the European integration. A number of women's NGOs, public agencies and state institutions coordinate or participate in projects within the framework of programs administered by the EU (PHARE, SOCRATES, INTERREG and others).

Although under the Act on Equal Opportunities of Women and Men (1999) state institutions are obliged to draw up and implement programmes aimed at assuring equal opportunities for women and men within the field of their competence, they would find it difficult to undertake any serious action of gender mainstreaming because of the lack of resources. Accordingly, state institutions are very limited to provide assistance to the programs of public organisations that assist in the implementation of equal opportunities of women and men as required by the law.

The lack of data disaggregated by sex and age in many areas, as well as gender equality research within certain fields of the competence of state institutions, can be seen as one of the major obstacles for successful gender equality policies.

Although the Government has passed the National Program on Equal Opportunities of Women and Men (2003–2004) and approved its activity report for the year 2003, and other programs and action plans are in the process of implementation, further sustained efforts and integrated strategies are badly needed to overcome the social and economic challenges underlying discrimination on grounds of gender.

An analysis of several national programs reveals that a number of actions overlap through several programs, thereby diminishing the total amount of measures which are successfully implemented. Not all actions foreseen in the programs correspond to the actual need of measures to be undertaken in terms of their scale, funding and efficiency. It can be said that the actions are more striking on paper than in reality, and

they are not given sufficient attention at the governmental level. Moreover, the ministries implementing the actions assigned to them by the National Program on Equal Opportunities of Women and Men rarely undertake additional actions or develop strategies in the field of their competence.

Measures implemented in the framework of the Program on Equal Opportunities in many cases give the impression of having more of a one-time nature, instead of foreseeing the planning and continuous development of strategies and policies. Although it must be said that the successfully implemented tools will have some long-term results, more attention should be paid to the sustainability and regularity of their implementation. It has often been the case that surveys carried out in one field or another revealed major shortcomings, but these were not transformed into meaningful follow-up actions.

Research and statistics

Although equal pay for equal work is strictly regulated by legislation, the pay gap constitutes another big discrepancy with regard to women's employment. As of 2003, the pay gap was 16.8% in the private sector and 24.8% in the public sector, despite the fact that women dominated in tertiary education. This wage differential is due to the fact that female-dominated activity fields in the public sector (social care, education, etc.) are generally paid less than those sectors dominated by men (energy, etc.). In 2003, women were dominant in the sectors of health and social work (85.6% of all employed), education (79.3%), hotels and restaurants (81.3%).

The pay gap is due to vertical segregation in the labour market, where men as a rule occupy senior positions. This can explain the discrepancy between the female and male pay in the same employment field. In 2003, women earned less than men in all the sectors covered by the data of the Statistics Department (the total of 14). The biggest pay gap was observed in the financial intermediation sector.

Key recommendations

- Final amendments and supplements should be made to existing legal acts to fully harmonise them with the requirements of the EU law in the field of gender equality;
- Equal retirement ages should be set for women and men;
- A methodology should be developed to evaluate jobs in terms of equal pay for equal work and work of equal value;
- A gender equality expert should be given a position in every ministry, county and municipality administration;
- Programmes should be developed to train specialists on gender issues;

- The Commission on Equal Opportunities should be strengthened in terms of administrative staff to give its activities more weight, visibility and effectiveness;
- Better coordination should be ensured between the institutions within gender equality machinery;
- Cooperation between social partners should be intensified (the legal framework is provided for in the labour code, but it must be implemented in practice);
- Appropriate allocations from the state budget should be ensured to the state institutions working in the field of gender equality so as to provide them with sufficient human and material resources to implement their tasks effectively;
- Mechanisms should be established to enable effective implementation of the Article 3 of the Act on Equal Opportunities of Women and Men, obliging state institutions to provide assistance to the programs of public organizations aimed at assisting in the implementation of equal opportunities of women and men;
- A centre for legal, economic and social gender studies (think-tank) should be established and receive national co-funding;
- Institutions and organisations should be obliged to collect and analyze gender-segregated statistical data related to their activities;
- National funding conditions of European programmes on gender equality that request national co-funding should be reviewed; the possibility of establishing a separate national fund for the purpose of co-funding should be discussed;
- The Ministry of Finance should be encouraged to review existing rules for budgetary allocations and to adapt them to the requirements of European programmes;
- The Ministry of Finance should be encouraged to undertake the initiative of developing methods for gender responsive budgeting, possibly in cooperation with Nordic experts;
- National funding should be allocated to non-governmental initiatives in the field of education, de-stereotypisation of the public sphere, and changing gender attitudes;
- Sufficient information on gender equality policies and concepts should be provided on the websites of gender equality institutions;
- New national measures aimed at easing the reconciliation of family and work responsibilities should be developed;
- Programs should be created to raise gender sensitivity, knowledge on gender equality policies and gender mainstreaming among civil servants and to develop effective methods of their implementation;

- Trainings should be provided to non-governmental organisations on how to participate in European gender equality programs as well as to make use of the Structural Funds;
- The visibility of gender issues should be increased in the public sphere by means of broad awareness raising campaigns;
- Programs on gender equality should be included in the training of teachers and curricula of education institutions;
- Women should be assisted with career counselling to support them in pursuing “non-traditional” occupations;
- The establishment of women resource centres in rural areas should be encouraged, so as to provide rural women with necessary assistance;
- Methodologies should be developed to overcome gender stereotypes in textbooks;
- Methods should be developed to encourage women to take a more active part in politics through NGOs and party policies;
- Project experience and the activities of NGOs should be brought together in one source of information available on the internet;
- The network of NGOs working in the field of gender equality should be strengthened in order to develop an effective and powerful source of lobbying for state policies in the field of equal opportunities.

Executive Summary for Poland

Introduction

The legislative efforts aimed at transposing the *Acquis Communautaire* into Polish labour law and the social security system concerned almost all EU Directives on equal treatment. However, the Amending Act of 14 November 2003, which was to universalise the provisions set forth in Chapter II of the Labour Code, either did not include issues important from the perspective of non-discrimination of women in employment, or defined them in a more general way. The Act risked lowering the standard of protection against discrimination on grounds of sex.

The implementation of the newest anti-discriminatory directives has not been complete or adequate. Nevertheless, as a result of the introduction of all these amendments to the labour law, Polish legislation in force meets the legal requirements of the EU Directives on equal treatment to a large extent.

The monitoring report from 2002 set forth a number of recommendations; not all of these have been implemented. For example, there is still no general job classification system for calculating remuneration. Importantly, the lack of a universal system of work evaluation and comprehensive criteria does not allow for different types of work to be compared.

Following the Amending Act of 24 August 2001, the amended Section 11 (3) of the Labour Code can be positively assessed, as the wording ‘in an employment relationship’ was replaced by the term ‘in employment’. This resulted in eliminating a certain ambiguity that was signalled in 2002, and which raised questions as to whether the prohibition of discrimination could also be applied to employees’ recruitment.¹ Following the amended clause, it is clear now that the prohibition covers all aspects of the employment relationship, beginning with the recruitment process, defining the employment relationship, its continuation and conclusion.² Nevertheless, regulations in force concerning access to employment still do not meet the current EU standards introduced by the directive 2002/78/EC for several reasons. Although the Polish Labour Code applies the general definition ‘in employment’, the use of the phrase ‘initiation of an employment relationship’ in Section 18 (3)(a) of the Labour Code deprives self-employed persons of the protection from discrimination set forth in this clause.

¹ See E. Zielinska (2002: 74).

² Compare to M. Gersdorf, K. Rączka, J. Skoczyński (2004: 51).

Although the definition of indirect discrimination in force is more approximate to the definition set forth in the EU directives on equal treatment than its previous version, it remains unsatisfactory in certain aspects. For example, the Polish provision referring only to objective justification, and omitting a legitimate aim and the principle of proportional means to the aim, does not reflect the original EU idea.

It should be also noted that the exemplary enumeration of grounds for discrimination set forth in Section 11 (3) of the Labour Code has been expanded. It cannot, of course, be assessed negatively as the EU directives create only a certain minimum standard. Nevertheless, due to the incorrect identification of admissible exceptions from the principle of equal treatment within the meaning of these directives, the application of anti-discriminatory regulations in force may lead to unjustified complaints in practice (e.g. Section 18 (3) (b) § 2, point 3).

Institutional mechanisms

The institutional mechanism on gender equality in Poland is the Governmental Plenipotentiary for Equal Status of Women and Men. The Plenipotentiary is placed at the executive, governmental level as the Secretary of State in the Chancellery of the Prime Minister.

The duties of the Plenipotentiary within the scope of equal status of women and men include

- Analysing and evaluating the legal and social situation with respect to equal treatment and equal opportunities for women and men;
- Initiating and co-ordinating actions aimed at achieving equal treatment and equal opportunities for women and men, as well as protection against discrimination based on sex in all areas of social life.

The Plenipotentiary, within the scope of competence, does not have any power to make decisions. The competence is limited to monitoring, analysis, assessment, informing, promotion, and education. The Plenipotentiary may also influence governmental policy within the scope of equal status of women and men by submitting, with the consent of the President of the Council of Ministers, drafts of governmental documents related to the scope of her responsibility under the consideration of the Council of Ministers.³

Until 2003, the office of the Plenipotentiary was centralised. There have been gradually established Voyevod's Plenipotentiaries for the Equal Status of Women and Men (regional level of executive governmental authorities) and one plenipotentiary has been nominated at the lower level (at local county level).

³ § 8 of the mentioned above Ordinance.

There is no specific internal mechanism to monitor the implementation of the duties entrusted to the Plenipotentiary. As in a case of any other governmental plenipotentiary, the activity is under control of the President of the Council of Ministers.

Representatives of non-governmental organisations are members of the Programme-Consulting Council established by the Plenipotentiary and have an opportunity to submit their comments and suggestions towards issues that have been included on the agenda of the Council's meetings, which take place every two months.

The Governmental Plenipotentiary for Equal Status of Women and Men is assumed to be a "passing" institution as the power exists until the entrusted tasks are complete. The current placement of the Plenipotentiary within the State's structures and the fact that the Office is established on the grounds of the Ordinance of the Council of Ministers leads to institutional dependence on subsequent governments. The fact that the Plenipotentiary was entrusted with new tasks in 2003 related to combating discrimination based on race, ethnic origin, religion or belief, age and sexual orientation, and making arrangements to establish a new office in charge of combating discrimination, may give rise to fears that gender equality will be marginalized in the future.

Policies, programs and awareness raising

In Poland, no comprehensive gender equality strategy has been developed yet. Under the leadership of the Prime Minister Leszek Miller, the only efforts made by the Government to promote gender equality were 'imposed' by the European Commission within the process of harmonisation of Polish law with the *Acquis Communautaire*. There was a lack of clear political will to promote equal treatment of women and men and to support the efforts made by the Governmental Plenipotentiary for Equal Status of Women and Men, resulting in the lack of a coherent gender equality strategy. The fact that equal treatment of women and men was placed in the general anti-discriminatory context would rather enforce this tendency and may lead any positive actions aimed at promoting equal opportunities for women and men to stop.

There is no comprehensive gender mainstreaming strategy in Poland. In 1997, the former Plenipotentiary for Family Affairs and Women organised a workshop for members of the Council of Ministers, aimed at presenting the idea of gender mainstreaming to decision-makers and consulting on its implementation. However, the expected outcomes were not achieved because most of the Ministers delegated lower officials to take part in the workshop, and due to the changes in the Government.

One cannot say that there is a specific comprehensive policy related to the promotion of women's participation in the labour market understood as the reconciliation of family and professional life. Occasionally some efforts have been made to eliminate

female unemployment, which until the end of last year was much higher among women than men. It is promising that one focus of the structural funds policy is on combating gender discrimination in the labour market.

There is no specific governmental policy aimed at reducing the gender pay gap. The gender pay gap is considered inevitable and, with the exception of amendments to the labor law, no coordinated efforts have been undertaken in order to ensure equal payment for women and men.

In terms of the elimination of sexual harassment, all efforts have been limited to legislative amendments.

In addition to the National Action Plan for Women, the Governmental Plenipotentiary for Equal Status of Women and Men implements two other programs within Phare 2002. The Program “Enhancement of Policies on Equal Treatment of Women and Men” is carried out in collaboration with Danish-Austrian consortium. The twinning program “Strengthening anti-discrimination policies” is run in co-operation with the Ludwig Boltzman Institute of Human Rights in Austria. It concerns mainly the elimination of discrimination based on race and ethnic origin, but due to the focus on awareness-raising of different professional groups (e.g. lawyers), the project helps indirectly to better an understanding of gender discrimination.

There are no specific structures in place in Poland to support the implementation of the *acquis* related to equal opportunities. Because equal treatment was protected in the Labor Code, the monitoring of its implementation falls within the scope of duties of the State Employment Inspection and Social Employment Inspection.

There are no specific programs to encourage men to take a greater role in family life, to change attitudes regarding family responsibilities, or to encourage the sharing of parental leave schemes by both parents. Nor are there any specific programs to support flexible working arrangements or to address gender equality within social security schemes.

Research and statistics

Official statistics clearly show an unjustified gender pay gap. According to the newest statistical data of the Central Statistical Office, as of 2003,⁴ women’s average salary was equal to 83 percent of men’s average salary. This indicates a certain reduction in the disproportion between women’s and men’s payment compared with previous years.

⁴ Main Statistical Office (2003: 182).

For example, statistical data as of 1999⁵ indicate that the average women's salary was equal to 79 percent of men's average salary.

More cases of sexual harassment have been brought before the court in recent years. These cases covered 'drastic' sexual harassment (i.e. forced sexual abuse using undue authority or difficult conditions of the abused person) and for that reason these cases were examined before the criminal court. However, the court statistics do not show that these cases of sexual harassment took place in the workplace. Persons subject to harassment have brought cases before the civil court claiming a violation of their dignity or other personal rights. It should be emphasised that until 2004, this was the only way of claiming rights by the sexually harassed person, as sexual harassment was not considered a form of discrimination. However, such cases were rarely brought to court due to long-term oppressive proceedings, and high costs.⁶ Statistics concerning cases related to the violation of personal rights do not specify whether this violation concerned sexual harassment.

There is no systematic campaign to promote gender equality legislation once it is adopted at the governmental level, though some newspapers publish articles on the specific topics (for example, the "Gazeta Wyborcza" published a series of articles about mobbing and sexual harassment).

Key recommendations

- The provisions concerning equal treatment of women and men set forth in the Labour Code must be improved;
- Protection against discrimination on grounds of sex should be extended to areas of social life other than employment;
- Legal regulations concerning the Governmental Plenipotentiary for Equal Status of Women and Men should be amended in order to base it on statutory law;
- The rank of this Office should be raised;
- The office should be equipped with a broader competence for decision-making and executive power as well as quasi-judicial powers;
- The budget of the Office should be increased with a view to conducting research, monitoring and developing a gender mainstreaming strategy, and coordinating its implementation and evaluation;
- A decision should be made as regards the scope of accountability of the Office; in case an anti-discriminatory office is set up, there should be a unit in charge of promoting equal treatment of women and men.

⁵ Main Statistical Office (2000a: 164).

⁶ E. Zielinska (2002: 96).

- The Government should run an active pro-equality policy in the form of affirmative action;
- The Government should strengthen the institutionalisation of a gender equality framework by establishing an anti-discriminatory office with quasi-judiciary competence in order to deal with discrimination cases;
- The Government should – in collaboration with non-governmental organisations – develop specific programs on gender equality and ensure their effective implementation and evaluation;
- The Government should undertake systematic efforts to gender sensitise society and raise awareness in the areas of discrimination;
- Gender equality education should be introduced at all levels of the education system, including continuing education aimed at promoting the right to equal treatment and the possibilities of pursuing claims in a case of a violation;
- Initiatives undertaken by women’s non-governmental organisations within the scope of mentioned above programs should be supported as a matter of priority and effective implementation of existing programs should be ensured;
- Additional funds should be raised to conduct research on the impact of EU directives on implementing the principle of equal treatment between women and men;
- Separate statistics should be provided on cases of discrimination on grounds of sex;
- Special records of cases of sexual harassment in the workplace should be kept, and internal procedures should be set up within companies.

Executive Summary for Romania

Introduction

In the last two years the Romanian legislation concerning equal opportunities for women and men, discrimination and social security schemes has been substantially modified. Some of the changes are meant to fulfil the obligations of the Romanian Government to implement the European Union Directives on equal opportunities and on anti-discrimination. Other amendments diminished the former provisions, without being contrary to the EU Directives.

The main changes that took place are related to the protective measures for pregnant workers, women who have recently given birth or are breastfeeding. Almost all the recommendations made in the first report related to the Council Directive 92/85/EEC of 19 October 1992 *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* have been introduced in Romanian legislation.

The Labour Code underwent a major revision at the beginning of 2003. In the new version of the Labour Code, an article is dedicated to regulating night work for pregnant women, women who have recently given birth or are breastfeeding. Other important aspects are mentioned in the same law, including: the reversal of the burden of proof in a work conflict (Article 287); the right to take a few days of leave in case of special family events without loss of pay (those days are not included in the usual leave, Article 147); regulations on part time work (part time employees benefit from the same rights as fulltime employees; regulations on the flexible work programs (Articles 108-116). Other rights related to equal opportunities for women and men they have remained as in the former Labour Code.

Regulations related to parental leave have also been modified. According to the Law 577/2003, the benefit for parental leave has been settled at “85 percent of the average gross medium salary used to substantiate de budget of the social security scheme and approved through the law on budget of social security schemes.” An additional important change concerning the provisions on parental leave was the extension of the compulsory minimum length of subscription to social security schemes from six months to ten months. These changes are considered to be a step back from the earlier regulations given that:

- The Government lost the chance to really encourage men to take parental leave by establishing a fixed amount of money, which is, on average, lower than men earn by going to work and not taking parental leave.

- The extension of the minimum length of subscription to social security schemes from six months to ten months has diminished the chance for women and men to take parental leave if they are not working at least ten months before the child's birth.

Anti-discrimination legislation in Romania also includes the issue of gender discrimination. As a result, the topic is addressed both in anti-discrimination legislation and in equal opportunities legislation. In the last two years the legislation on anti-discrimination measures has been also amended by introducing the following concepts: indirect discrimination, harassment, victimisation, disposition to discriminate, and the fines for discrimination have been increased.

The definition of a self-employed person was introduced in Romanian legislation in 2002 and was modified in 2004, through *Law 300/2004 on Authorising Persons and Family Association which Independently Carries on Economic Activities*. No references to equal opportunities for women and men principles are made in this law.

In the second half of 2004 the Ministry of Labour, Social Security and Family is going to work to amend the Law 202/2002 on Equal Opportunities for Women and Men by introducing the provisions of the *Directive 2002/73/EC of 23 September 2002 amending Council Directive 76/207/EEC 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*. The first draft of the amendments raised important questions related to the accuracy of the transposition of the 2002 EU Directive.

Institutional Mechanisms

The institutional mechanisms on gender equality in Romania are placed at the Parliamentary and Governmental level.

At the Parliamentary level, the national mechanism on gender equality is comprised of two bodies: the Commission on Equal Opportunities between Women and Men, placed at the Deputy Chamber level, and the Commission on Equal Opportunities for Women and Men, placed at the Senate level. Unfortunately, both bodies proved not to be in a position to work for their mandate because of a lack of real political interest in the field of equal opportunities for women and men, as well as a lack of financial resources to sustain their activity.

At the Governmental level, the institutional mechanisms on gender equality are decorative, and their tasks are difficult to follow due to a significant number of legal changes over the past four years. Thus, through the reorganization of the Ministry of Labor, Social Solidarity and Family, the former Directorate for Equal Opportunities has disappeared from the ministry's structure. The structure that currently has tasks on gender equality in the governmental sector is the Inter-Ministerial Consultative

Commission on Equal Opportunities for Women and Men. Its tasks were modified through a significant number of legal acts; as a result, the role of this structure, and how its tasks are to be efficiently fulfilled, are unclear.

The above described governmental mechanisms based on the legal provisions of the Governmental Decision 967/1999 will cease to exist on April 15th 2005, according to the legal provisions of the newly adopted Governmental Decision 84/2004. The governmental mechanism on gender equality is under review, in light of changes to the legal framework on equal opportunities for women and men. Thus, the Law 202/2002 on Equal Opportunities for Women and Men¹ has been amended through the legal provisions of the Governmental Decision 84/2004, with the aim of incorporating the changes generated by the Council Directive 2002/73/EC of 23 September 2002, amending Council Directive 76/207/EEC 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.

Based on the provisions of the Governmental Decision 84/2004, the *National Agency on Equal Opportunities between Women and Men* will be set up on 1 January 2005. The Agency will begin to function on 1 March 2005.

Programs, Policies and Awareness raising

It is not possible to make references to policies or programs on gender equality in Romania. The National Plan of action on equal opportunities between women and men, provided for in the Governmental Decision 1273 from December 7th 2000, did not meet its established objectives in their entirety. The action objectives stipulated in the legal norm were not accomplished. As such, in this regard, Romania has failed to meet its obligations in relation to gender equality.

Four years after the National Plan for action on equal opportunities between women and men was approved, the Governmental Decision 285 from 4 March 2004 on the application of the National Plan was adopted. According to the legal provisions of the Governmental Decision 285, new structures on gender equality were set up. These structures are represented by the “specific structures on equal opportunities for women and men” located within the central public administration authorities and within their public de-concentrated services. As long as, based on the legal provisions of Article 4 of Governmental Decision 285, these specific structures are to be set up within the limits of the personnel posts and budgetary allocations already approved, it is to be underlined that these structures function only on paper. In the same way, the information activities and professional training on legislation on gender equality to be

¹ See the Law 202/2002 from April 19th 2002 on Equal Opportunities for Women and Men, published in the *Official Gazette* 301/May 8th 2002.

carried out by the central public administration authorities are to be assured within the limits of the already approved budgetary allocations, according to the legal provisions of the Article 6 of Governmental Decision 285. Therefore, it is to be highlighted that these activities will not be carried out as long as no funds are independently secured.

There are no state policies to promote women's participation in the labor market, such as promoting flexible working arrangements, or supporting women to re-enter the labor market after taking leave to care for children. There are no state policies or initiatives to reduce the gender pay gap, even if in the discourse of state official representatives the gender pay gap reality is recognized and mentioned. There are no state policies aimed at involving men in sharing family responsibilities. As a general remark, aspects such as reconciling work and family life, changing attitudes on gender stereotypes, or encouraging men to take greater family responsibilities are absent from political discourse. Specific programs and initiatives in these fields are still addressed by non-governmental organizations or other civil society actors.

Research and Statistics

In October 2002, women earned 82.6 of men's average income.² The gender pay gap has decreased constantly from 1995 to 2002, from 21 percent in 1995 to 17 percent in 2002. This situation is not due to an explicit policy to encourage the elimination of gender pay gap, but is the result of a system of establishing the salaries on the basis of working time, qualification for the work and the length of service. The specialists estimate that the gender pay gap is bigger in the private sector than in the public sector. One reason for this is that many payments for salaries are made unofficially, so, officially, most employees have the legal minimum wage.

After the local elections in June 2004, no official data was made public related to the number of women in central and local decision-making bodies. According to the data related to the election participants, a greater number of women were included in the election lists. Comparing the elections of 2004 with those from 2000, there was considerably more public debate dedicated to women's participation in politics. According to statistics, in 2002, 30 percent of members of the legislative bodies, executive, leaders of public administration, leaders and clerks of socio-economic and political units were women.³ The number has been increasing constantly since 1995 (at which time it was 28.2 percent).⁴

² National Institute of Statistics, *Romanian Statistical Yearbook 1990–2002 time series*, 2004, chapter 4, p. 10 (hereafter, NIS, *Romanian Statistical Yearbook 1990–2002*)

³ NIS, *Romanian Statistical Yearbook 1990–2002*, chapter 3, p. 12.

⁴ UNDP, *Human Development Report 2001–2002*, UNDP, p. 89.

Between September and December 2003, the Labour Inspection has sanctioned seven employers for not respecting legal provisions on equal opportunities for women and men.

According to the statements of the representatives of the National Council for Combating Discrimination, between 2002 and the first half of 2004, 18 cases of gender discrimination have been resolved by the Council. No details were provided about the nature of cases.

Key recommendations

- The activity of the Parliamentary structures should move beyond the decorative and should generate a concrete impact on the equal opportunities for women and men agenda in Romania;
- The National Agency for Equal Opportunities should be given and guaranteed the financial and human resources to meet its established mandate;
- The National Agency for Equal Opportunities should ensure the equal opportunities mandate is followed as a priority;
- Integrated and consistent state policies on various aspects of gender equality should be developed as a matter of priority;
- The legal norms aimed to put in practice gender equality commitments undertaken by the Romanian Government should be adequately structured and capable of practical implementation;
- Specific policies addressing the gender pay gap should be put in place by the Government;
- The inclusion of sex variables in collecting statistical data should be continued in order to have more gender disaggregated data;
- A gender perspective should be introduced in educational curricula, and trainings for teachers on gender issues should be initiated by the Ministry of Education and Culture;
- Detailed information on gender discrimination cases solved by the Labour Inspection and the National Council for Combating Discrimination should be made available, together with a complete report on these institutions' activities;
- More concrete measures should be taken to introduce the obligation of the mass media to respect the dignity of persons (women and men). A deontological code should be created and should also include a gender perspective (or gender issues);

- More transparent procedures should be established regarding the nomination of candidates on the election list. Specific measures to encourage women's participation in politics should be introduced (for example, a quota system);
- Civil society should be more involved in the process of drafting gender equality legislation, and the access to public information on the issue should be increased;
- The Governmental institution should organise public campaigns on gender equality legislation and on gender issues in order to increase the public awareness on the topic.

Executive Summary for Turkey

Introduction

In its 2004 Regular Report, the European Commission carefully reviewed the progress towards gender equality between women and men and noted the further steps that should be taken by Turkey. The main judicial, administrative and institutional reforms, which were mentioned as positive developments in the Report, are the following:

- A new clause on gender equality was introduced to Article 10 of the Constitution on 7 May 2004, which reads “women and men have equal rights” and “the state is responsible for taking all necessary measures to realize equality between women and men.” The new Turkish Penal Code eliminating almost all discriminatory provisions and promoting women’s human rights was enacted on 26 September 2004;
- Awareness among public including law enforcement officers on violence against women is increasing continuously;
- The new Labor Law was adopted by the Parliament on 22 May 2003. New regulations introducing the principles of employment of pregnant and breast-feeding women and night work became operative in 2004;
- Maternity leave was increased to 16 weeks, which has also become applicable to civil servants later on;
- A Circular by the Prime Ministry was issued in 2004 prohibiting gender-based discrimination in the recruitment of civil servants in the public sector.

Comments on gender equality issues stated in the 2004 Progress Report can be summarized as follows: Legal and practical initiatives to tackle the problem of domestic violence remain inadequate; women remain vulnerable to discriminatory practices, largely due to a lack of education and high illiteracy rates among women; the portrayal of women in school text-books reinforces discrimination; there is still very little progress in the legislation regarding the protection of workers including female workers; Turkey has not yet accepted Article 5,6,7,8 and 17 of the European Social Charter; the principle of equal pay for the work of equal value is not being realized fully.

Recommendations on gender equality issues stated in the 2004 Progress Report can be summarized as follows:

- Parental leave should be introduced into national legislation;

- An additional effort is required on the issues of burden of proof and compulsory and occupational social security schemes;
- The scope of Labor Law should be extended to cover excluded sectors and enterprises;
- The rate of women in decision-making mechanisms should be increased;
- The existing national mechanism must have a legal base.

In addition, it is recommended in the progress report that Turkey should continue its efforts to develop a national employment policy in line with the European Employment Strategy. The progress report also states that very low activity and employment rates, in particular for women, high levels of youth unemployment, the large size of the informal economy and the strong rural/urban labor market divide remain the main challenges.

As indicated in the above-mentioned documents, further efforts for gender equality are needed in Turkey in judicial, institutional and administrative fields. There is also a need to further improve equal treatment between women and men in the labor market. Although equal opportunities and gender equality have yet to be fully achieved, the EU accession process has generated and encouraged many important reforms, in legislation in general, and related to gender equality in particular.

Institutional mechanisms

The Directorate General on the Status and Problems of Women was established in 1990. It was affiliated to the Prime Minister and continued functioning under the Under-secretariat for Women and Social Services in 1994. With the abolishment of the Decree by the Constitutional Court, the Under-secretariat was left null and void for more than ten years. On 27 October 2004, the Law of the Directorate was approved by the Parliament. The lack of legal support for more than ten years and its insufficient financial and human resources inevitably weakened the machinery considerably. The adoption of the Law concerning the legal identity of the organization was among the short-term commitments contained both in the 2001 and 2003 National Reports; therefore this obligation is also fulfilled in line with EU requirements. With this new development, the machinery became the Directorate General on the Status of Women.

A department was established under the State Institute of Statistics (DIE) in order to produce a gender-segregated database.¹ In addition, new 'Women Units' were established under the Ministry of National Education, the Ministry of Agriculture and the General Directorate on Social Services and the Protection of Children.

¹ As an article on arguments and for more details please see Selma Acuner, 'The '90s and the Institutionalization of Gender Equality at the State Level' in Aksu Bora-Asena Gunal, (ed.), *Feminism in Turkey in the '90s*, İletisim, Istanbul: 2002.

Furthermore, Gender and Women's Studies Graduate Programs at the Middle East Technical University, Ankara University's Women's Research and Studies Center (KASAUM) were established with this project. Today, there are women's studies programs in 14 universities and most of them were financially supported through the above-mentioned project.

In Turkey there is no institutional body such as the Parliamentary Committee for Gender Equality to ensure women's representation in the Parliament. In the course of the last 15 years, only once, in 1998, an ad hoc Parliamentary Commission was established to assess the status of women. This Commission, called the Turkish Grand National Assembly's Parliamentary Commission of Research on Women's Status, prepared and submitted a report that included some observations and recommendations to the public. There is also no structure such as an Ombudsman for Equal Opportunities. In the Cabinet there is only one minister in charge of gender issues and the national mechanism is under the authority of that minister.

Policies, programs and awareness-raising

The General Directorate on the Status and Problems of Women (KSSGM) and the relevant Ministry of State are responsible for adopting and coordinating national policies for promoting the equality of men and women. KSSGM was established in 1990 and attached to the Prime Ministry in 1991. In 1994, KSSGM became a part of the Undersecretariat. With the abolishment of the law of jurisdiction by the Constitutional Court, the Undersecretariat was left null and void. After ten years, its legal base was established in autumn 2004.

For the first four years of its establishment, KSSGM managed to implement policies based on "gender and development". As a result of such an effort, many achievements in legal and organizational contexts were realized. After the 1995 Beijing Conference, KSSGM tried to realize the strategy of "gender mainstreaming" (a strategy based on placing gender equality into the main national policies); however, this did not turn out to be a success. One of the most important reasons for KSSGM's failure was its weak position in the public administration and its vulnerability against political influences.

The National Program for the Enhancement of Women's Integration in Development, launched in 1993 by the Directorate General on the Status and Problems of Women (KSSGM), and financed jointly by the government of Turkey and the United Nations Development Program (UNDP), has aimed to enhance women's participation in development processes, to produce and compile gender-desegregated data, to enhance institutional capacity, and to create human resources.

There are an important number of women's organizations established with the aim of promoting the equal representation of women at all levels of the decision-making process in Turkey. Such NGOs aim to inform women of their rights to equal

representation by organizing educational programs for political parties, professional unions, and other NGOs. With the aim of promoting the equal representation of women at all levels of the decision-making process, women's NGOs closely cooperate with each other, prepare and submit various law drafts and policy recommendations, and advocate for putting their demands on the decision/law-makers' agenda. Although the efforts are well supported by the media, the level of representation of women remains quite below the critical threshold (with the exception of some political parties that have a 33 % quota provision).

Research and statistics

According to a 2002 Household Budget Survey conducted by the State Statistics Institute (DIE), there are 1.7 million salaried women, compared with 7.4 million salaried men. A comparison of annual wages for men and women shows that women receive 22.5% less than men.

Another study, covering large workplaces with collective bargaining agreements, conducted by the Turkish Confederation of Employer Associations indicates that the gender wage ratio is 88.8%.²

According to the Report entitled *The Woman in Work Life, Upper-Level Management, and Politics*, published in 2004, 14% of the Turkish women were subject to sexual harassment in the workplace. The same report also indicated that more than half of those women who were sexually harassed left their jobs.³

The on-going disincentives to women entering the labor market can be summarized under five general headings: i) low level of education among women, ii) low wages or salaries for women, iii) the lack of effective mechanisms for the reconciliation of family and professional life, iv) sexual harassment in the workplace, v) men's disapproval of women's work in the labour market.

Key recommendations

- Short, medium and long-term concrete strategic plans should be prepared in order to ensure gender equality;
- Special attention should be paid and financial and human resources should be allocated for the strengthening of the national mechanism;

² Turkish Confederation of Employer Associations (TISK), *Women Labor Research*, Publication No. 185, 1999, Ankara.

³ Binnaz Toprak and Ersin Kalaycioglu, *The Woman in Work Life, Upper-Level Management, and Politics*, Turkish Economic and Social Studies Foundation (TESEV) Publications, 2004, Ankara, p. 64.

- The responsibilities of public institutions should be set and the conflict of authority should be reconciled concerning the development and management of gender equality policies and issues as such;
- Financial resources should be allocated towards the implementation of gender equality standards and the misuse of those resources should be hindered;
- Special attention should be paid and effective, time structured measures should be taken and implemented to ensure the access of NGOs and especially women's organizations to all resources, including information;
- There should be a compulsory quota mechanism and positive action measures in education for women and girls, and gender stereotypes should be eliminated from the educational materials and curriculums;
- Well-funded, clearly defined and scheduled plans and programs should be developed to improve women's access to the labor market;
- A 33% quota should be set for women as regards access to employment and promotion; vocational training should be guaranteed when women return to work after a break in employment;
- Professional standards should be determined and measures should be taken for the transparency of remuneration;
- The numbers of reasonably priced and accessible childcare centers, nurseries, and crèches should be increased to support and enable the reconciliation of familial/parental and professional obligations;
- There should be a special effort, especially *vis-à-vis* women, to educate individuals on gender equality regulations through broad educational campaigns, and to generate necessary funding to carry out those efforts;
- The conflict concerning the function of information sharing between the Ministry of Labor and Social Security and the national mechanism of the General Directorate on the Status and Problems of Women should be resolved and the status of the national mechanism should be clarified and enhanced;
- Other women's organizations should be encouraged to get involved in the mechanism of information sharing;
- The application process for EU grants should be simplified and institutions giving education in this field should be supported;
- The economic value of women's domestic work should be calculated and included in the calculation of national income;
- Data should be collected on non-conventional forms of works (including flexible forms of work);

- More information should be gathered concerning women working in the non-formal sector;
- New measures should be taken into consideration for the evaluation of the effect of the distribution of public resources on gender. In other words, the basic infrastructure for gender sensitive budgets should be developed.